

14-000-5007

**THE WHITE HOUSE OFFICE
REFERRAL**

February 05, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1131034

MEDIA: EMAIL

DOCUMENT DATE: January 30, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE ROY BLUNT
UNITED STATES SENATE
WASHINGTON, DC 20510

SUBJECT: URGES THE PRESIDENT TO CONSIDER THE BURDEN TO RATEPAYERS
BEFORE MOVING FORWARD WITH PLANS TO INCREASE REGULATION OF THE
EXISTING POWER GENERATION FLEET

COMMENTS:

PROMPT ACTION IS ESSENTIAL - IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 63, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: February 04, 2014

CASE ID: 1131034

NAME OF CORRESPONDENT: THE HONORABLE ROY BLUNT

SUBJECT: URGES THE PRESIDENT TO CONSIDER THE BURDEN TO RATEPAYERS BEFORE MOVING
FORWARD WITH PLANS TO INCREASE REGULATION OF THE EXISTING POWER
GENERATION FLEET

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	CODE	DATE
LEGISLATIVE AFFAIRS	MIGUEL RODRIGUEZ	ORG	02/05/2014		

ACTION COMMENTS:

✓ ENVIRONMENTAL PROTECTION AGENCY R 02/05/2014

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COMMENTS: 21 ADDL SIGNEES

MEDIA TYPE: EMAIL

USER CODE:

ACTION CODES		DISPOSITION	
		TYPE RESPONSE	COMPLETED DATE
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	DISPOSITION CODES	
		A = ANSWERED OR ACKNOWLEDGED	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)
		C = CLOSED	
		X = INTERIM REPLY	

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 REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590
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United States Senate

WASHINGTON, DC 20540

January 30, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC

Dear President Obama,

As a consequence of your recent Executive Order relating to your June 2013 Climate Action Plan (CAP), the Environmental Protection Agency (EPA) has conducted "listening sessions" in anticipation of proposing a rule designed to address emissions of greenhouse gases from existing power plants. Leaving aside whether EPA even has the legal authority to do this, as well as the dubious value of conducting "listening sessions" far from the homes of many of those most likely to be affected, we write to urge that you consider the burden to ratepayers before moving forward with plans to increase regulation of the existing power generation fleet.

In 2009, the American Clean Energy and Security Act, commonly known as "Waxman-Markey," passed the Democratic-controlled House, but was not even considered in the Senate. The central provision of that legislation would have placed a cap on greenhouse gas emissions, which would then be sharply reduced over time. The legislation contemplated a final target of roughly 80% below 2005 levels by 2050. This bill was rejected by Congress for a variety of reasons, including primarily the tremendous costs it would impose on consumers and the economy for little or no benefit. For example, one study found that the bill would raise electricity rates by 90% (after adjusting for inflation).¹

Your June 2013 CAP announcement differs little from Waxman-Markey. Your CAP reflects the goal you announced in 2009 to reach an 80% emissions reduction by 2050 below 1990 levels.² Even if met, this goal, which was developed with no input from Congress, will have no measurable effect on global temperatures.

¹ William W. Beach, Ben Lieberman, Karen Campbell, and David W. Kreutzer, *Son of Waxman-Markey: More Politics Makes for a More Costly Bill*, Heritage Foundation (June 16, 2009), <http://www.heritage.org/research/reports/2009/05/son-of-waxman-markey-more-politics-makes-for-a-more-costly-bill>

² Matthew Wald, *Energy Secretary Optimistic on Obama's Plan to Reduce Emissions*, N.Y. Times (June 27, 2013), http://www.nytimes.com/2013/06/28/us/politics/energy-secretary-optimistic-on-obamas-plan-to-reduce-emissions.html?_r=0.

The goal will nonetheless cost consumers in the form of increased prices for energy and anything made, grown, or transported using energy. These new costs will result in less disposable income in families' pockets. That means less money to spend on groceries, doctors' visits, and education. In short, low cost energy is critical to human health and welfare.

For some ratepayers, like the millions of rural electric cooperative consumers in the country, coal makes up around 80% of their electricity. According to the 2009 Bureau of Labor Statistics Consumer Expenditure Survey, nearly 40 million American households earning less than \$30,000 per year spend almost 20% or more of their income on energy.³ The most vulnerable families are those hit the hardest by bad energy policies and high utility bills.

For consumers, your Administration's actions will mean goods are costlier to produce and therefore costlier to purchase. Manufacturers and employers will face higher costs of capital and labor. What's worse, as noted by a 2003 Congressional Budget Office (CBO) report, these are the types of losses that cannot be offset with subsidies or other forms of assistance. As a result these costs will be borne solely and directly by American workers and consumers.⁴

Manufacturers and companies will face higher production costs if they are denied access to affordable energy, and instead be forced to use costlier, less reliable forms of energy. These businesses will either pass these costs along to consumers, or their profits will suffer and threaten their viability.

Either outcome is unacceptable given that America is on the verge of a manufacturing renaissance. A large part of our manufacturing success has been due to the inexpensive and reliable electricity that this country currently benefits from. Low price natural gas is a part of this, as is coal, which at 40% of our electricity mix is still the main source of base load power for our nation.

Recent studies have predicted that the U.S. is steadily becoming one of the lowest-cost countries for manufacturing in the developed world. The study estimates that by 2015, average manufacturing costs in advanced economies such as Germany, Japan, France, Italy, and the U.K. will be up to 18% higher than in the United States.⁵

This should come as no surprise. The fact is that going "all-in" on renewables has significantly weakened the stability of many European Union (EU) countries' electricity generation, caused prices to skyrocket, and has left ratepayers footing the exorbitant bill. The EU subsidies for wind

³ Department of Labor, U.S. Bureau of Labor Statistics, Report 1029, *Consumer Expenditures in 2009* (May, 2011), available at <http://www.bls.gov/exxann09.pdf>.

⁴ Congressional Budget Office, *Shifting the Cost Burden of a Carbon Cap-and-Trade Program* (July, 2003), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/44xx/doc4401/07-09-captrade.pdf>.

⁵ Harold L. Sirkin, Michael Zinser, and Justin Rose, *The U.S. as One of the Developed World's Lowest-Cost Manufacturers: Behind the American Export Surge*, *bcg.perspectives*, (Aug. 20, 2013), https://www.bcgperspectives.com/content/articles/lean_manufacturing_sourcing_procurement_behind_american_export_surge.

and solar that began almost a decade ago in the name of ending reliance on fossil fuels have saddled customers with an increase of almost 20% in the cost of electricity for homes and businesses over the past four years.⁶

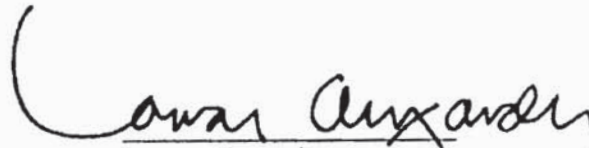
As an illustration, Germans will be paying more for electricity than any other major participant in the EU, according to the Household Energy Price Index for Europe. In September, Germans paid 40 cents per kilowatt hour (kWh) of electricity. Even the ratepayers in Connecticut, who suffer the highest electricity rates in the U.S. (17 cents per kWh), pay less than half that.⁷

Whatever our disagreements might be on how best to approach a changing climate, we think we can all agree that whatever we do should not burden ratepayers and consumers, especially middle and low-income families, with new costs. We therefore implore you to avoid any actions which damage ratepayers throughout this country, especially when those actions result in no measurable benefits and no measurable effects on the very thing that the actions are designed to address.

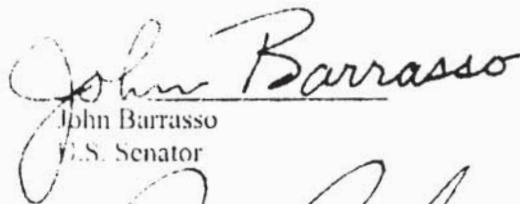
Sincere regards,



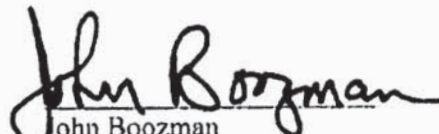
Roy Blunt
U.S. Senator



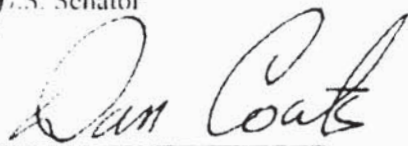
Lamar Alexander
U.S. Senator



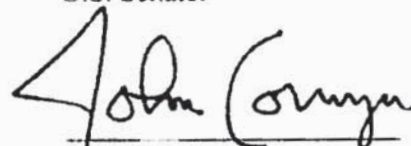
John Barrasso
U.S. Senator



John Boozman
U.S. Senator



Dan Coats
U.S. Senator



John Cornyn
U.S. Senator

⁶ Geraldine Amiel, *Energy Bosses Call for End to Subsidies for Wind, Solar Power*, Wall St. J. (Oct. 11, 2013), <http://online.wsj.com/news/articles/SB10001424052702303382004579129182510803694>.

⁷ William Pentland, *Berlin's Electric Rates Become Highest In Europe*, Forbes (Oct. 27, 2013), <http://www.forbes.com/sites/williampentland/2013/10/27/berlins-ballooning-electricity-rates-become-highest-in-europe/>.

Mike Enzi

Mike Enzi
U.S. Senator

Dean Heller

Dean Heller
U.S. Senator

Jim Inhofe

Jim Inhofe
U.S. Senator

Joe Manchin

Joe Manchin
U.S. Senator

Jim Murkowski

Jim Murkowski
U.S. Senator

James Risch

James Risch
U.S. Senator

Tim Scott

Tim Scott
U.S. Senator

John Thune

John Thune
U.S. Senator

Deb Fischer

Deb Fischer
U.S. Senator

John Hoeven

John Hoeven
U.S. Senator

Mike Johanns

Mike Johanns
U.S. Senator

Jerry Moran

Jerry Moran
U.S. Senator

Rob Portman

Rob Portman
U.S. Senator

Pat Roberts

Pat Roberts
U.S. Senator

Jeff Sessions

Jeff Sessions
U.S. Senator

David Vitter

David Vitter
U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 5 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of January 30, 2014, to President Obama regarding the Climate Action Plan and the upcoming carbon pollution guidelines for existing power plants and standards for modified and reconstructed power plants that the U.S. Environmental Protection Agency will propose in June 2014.

In June 2013, President Obama called on agencies across the federal government, including the EPA, to take action to cut carbon pollution to protect our country from the impacts of climate change, and to lead the world in this effort. The President also directed the EPA to work with states, as they will play a central role in establishing and implementing standards for existing power plants, and, at the same time, with leaders in the power sector, labor leaders, non-governmental organizations, other experts, tribal officials, other stakeholders, and members of the public, on issues informing the design of carbon pollution standards for power plants.

Your letter expressed concern about the burden on ratepayers, including consumers and manufacturers, from carbon pollution regulations on existing power plants. The EPA shares your concern over potential electricity price impacts of regulations on the American people. As we consider guidelines for existing power plants, the EPA is engaged in vigorous and unprecedented outreach with the public, key stakeholders, and the states. We are doing this because we want—and need—all available information about what is important to each state and stakeholder. We know that the guidelines will require flexibility and sensitivity to state and regional differences.

To this end, we continue to welcome feedback and ideas from you as well as your constituents about how the EPA should develop and implement carbon pollution guidelines for existing power plants under the Clean Air Act. When we issue the draft guidelines in June 2014, a more formal public comment period will follow, as with all rules, and more opportunities for public hearings and stakeholder outreach and engagement. We look forward to hearing what you think about the draft guidelines at that time, too.

Many Americans are also concerned about the impacts of climate change on the American people and on people around the world. Observed data shows that the climate in the U.S. is already changing. Severe heat waves are becoming more intense and frequent, increases in sea level put our coasts at risk, and rising temperatures and drought have led to an increase in wildfires—all of which threaten human health and welfare. Snow and rainfall patterns are shifting and more extreme climate events, such as heavy rainstorms and record high temperature, are taking place. Arctic sea ice is shrinking, and the oceans are becoming more acidic. Climate change is also expected to worsen regional ground-level

ozone pollution, resulting in harmful health impacts such as decreased lung function, aggravated asthma, increased emergency room visits, and premature death. Reducing the pollution that contributes to climate change is critically important to the protection of Americans' health and the environment upon which our economy depends.

Responding to climate change is an urgent public health, safety, national security, economic, and environmental imperative that presents great challenges and great opportunities not only here in the United States, but also around the world. The continued leadership of the EPA domestically and the success of the Clean Air Act for more than 40 years give weight to our efforts to work with international partners to address their emissions. Our global leadership has already inspired significant efforts by our partner countries towards emission reductions of their own.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. McCabe", written in a cursive style.

Janet G. McCabe
Acting Assistant Administrator

14-000-9990

United States Senate

WASHINGTON, DC 20510

May 22, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

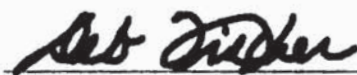
We are writing to request that the Environmental Protection Agency (EPA) provide at least a 120 day comment period on the upcoming draft proposal for the regulation of greenhouse gases from existing power plants. The EPA should provide this extended comment period as soon as the proposed rule is noticed in the federal register, given the significant impact this rule could have on our nation's electricity providers and consumers, on jobs in communities that have existing coal-based power plants, and on the economy as a whole.

The upcoming proposal will be far more complex and critical for the industry to deal with than the proposal for new plants, and stakeholders will need time to analyze the rule and determine its impact on individual power plants, reliability and consumer cost, and on the electric system as a whole. This analysis will be no small undertaking, as this will be the first ever regulation of greenhouse gases from existing power plants. EPA recognized that additional time was needed and extended the original 60 day comment period for the Agency's proposal regarding new source performance standards for newly constructed power plants, so it only makes sense to provide at least the same timeline from the outset for the existing plant rule.

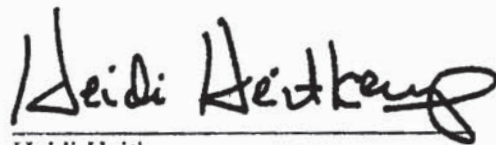
Affordable, reliable, and redundant sources of electricity are essential to the economic well-being of our states and the quality of life of our constituents. While we all agree that clean air is vitally important, EPA has an obligation to understand the impacts that regulations have on all segments of society. As one step toward fulfilling this obligation, we urge you to provide for a comment period of at least 120 days on the forthcoming performance standards for existing coal-based power plants.

Thank you for your consideration of this request.


Sincerely,



Deb Fischer
United States Senator



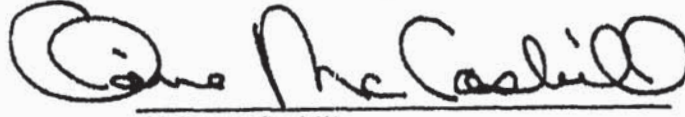
Heidi Heitkamp
United States Senator


John Boozman
United States Senator



Tom Harkin
United States Senator

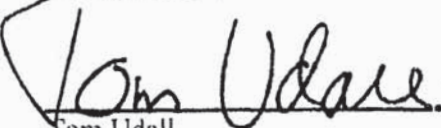

John Hoeven
United States Senator



Mark Warner
United States Senator

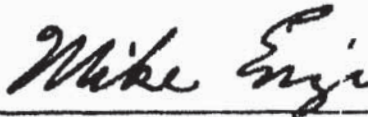

Claire McCaskill
United States Senator

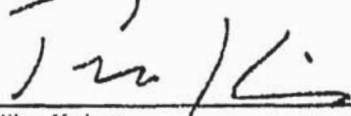

Tim Johnson
United States Senator



Lindsey Graham
United States Senator

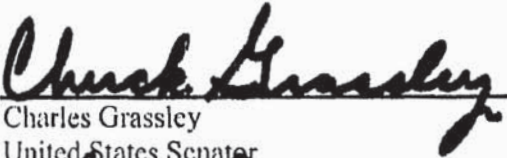

Tom Udall
United States Senator

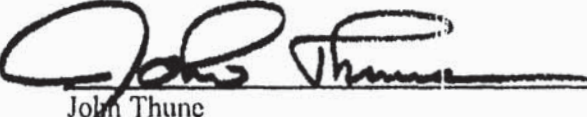

Roy Blunt
United States Senator


Mike Enzi
United States Senator

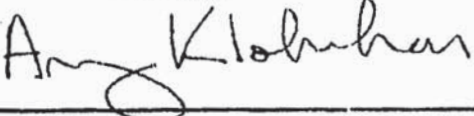

Tim Kaine
United States Senator

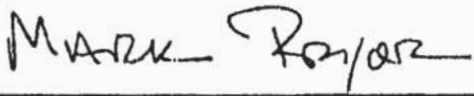

Jeff Sessions
United States Senator

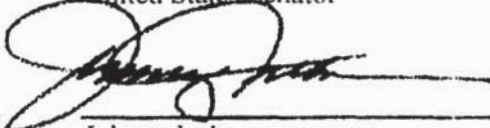

Charles Grassley
United States Senator


John Thune
United States Senator


Pat Roberts
United States Senator

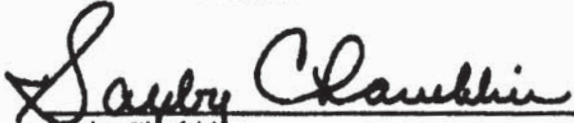

Amy Klobuchar
United States Senator


Mark Pryor
United States Senator

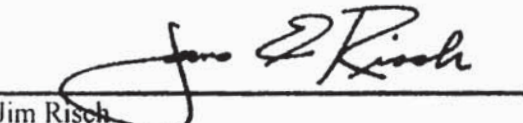

Johnny Isakson
United States Senator



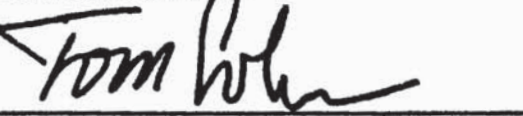
Jim Inhofe
United States Senator



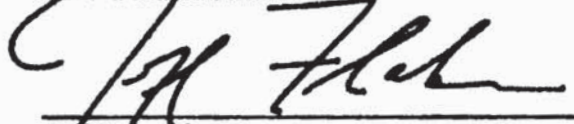
Saxby Chambliss
United States Senator



Jim Risch
United States Senator



Tom Coburn
United States Senator



Jeff Flake
United States Senator



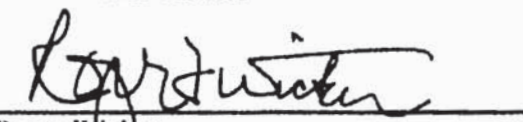
Mike Johanns
United States Senator



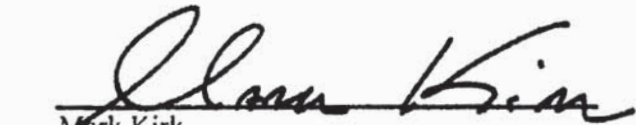
Tim Scott
United States Senator



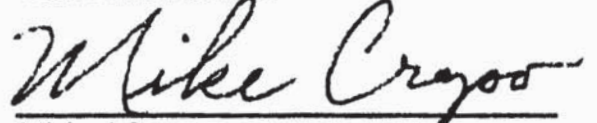
Mark Begich
United States Senator



Roger Wicker
United States Senator



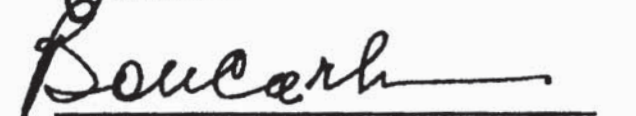
Mark Kirk
United States Senator



Michael Crapo
United States Senator



John Barrasso
United States Senator



Bob Corker
United States Senator



Orrin Hatch
United States Senator



Mike Lee
United States Senator



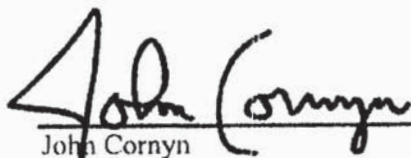
David Vitter
United States Senator



Lamar Alexander
United States Senator



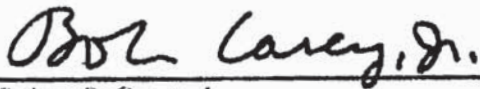
Rob Portman
United States Senator



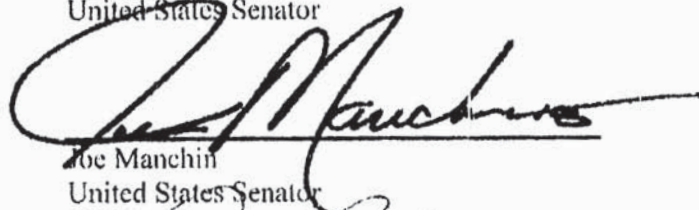
John Cornyn
United States Senator



Ron Johnson
United States Senator



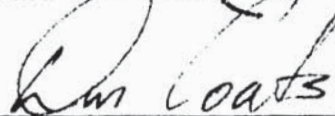
Robert P. Casey, Jr.
United States Senator



Joe Manchin
United States Senator



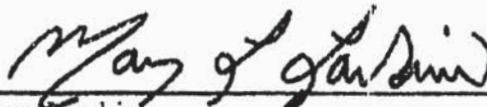
Joe Donnelly
United States Senator



Dan Coats
United States Senator



John Walsh
United States Senator



Mary Landrieu
United States Senator



Richard Burr
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 2, 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of May 22, 2014 to Administrator Gina McCarthy, requesting that the U.S. Environmental Protection Agency include a 120-day comment period on our proposed Clean Power Plan, also known as the Carbon Pollution Guidelines for Existing Power Plants. The Administrator has asked me to respond on her behalf.

As you know, the EPA conducted unprecedented outreach while developing this proposal. We met with stakeholders from around the country, including representatives from state and local governments, electric utilities, and civil society. Among the many creative ideas and constructive comments offered were requests similar to yours, to ensure that the comment period allowed the public sufficient time to provide meaningful input on this proposed rule.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex and novel, the EPA has decided to propose this rule with a 120-day comment period. This will allow the EPA to solicit advice and information from the many stakeholders and citizens who we expect will be interested in this rulemaking, giving us the best possible information on which to base a final rule. The proposed rule, as well as information about how to comment and supporting technical information, are available online at: <http://www.epa.gov/cleanpowerplan>. Comments on the proposed guidelines should be identified by Docket ID No. EPA-HQ-OAR-2013-0602.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe".

Janet G. McCabe
Acting Assistant Administrator

14-001-3189

United States Senate

WASHINGTON, DC 20510

August 1, 2014

The Honorable Barack H. Obama
President
The White House
1600 Pennsylvania Ave. NW
Washington DC 20500

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC 20460

Mr. President and Administrator McCarthy:

Last month, the U.S. Environmental Protection Agency (EPA) announced sweeping new regulations under Section 111(d) of the Clean Air Act in a purported effort to reduce emissions of carbon dioxide (CO₂) from existing power plants.¹

While we appreciate the EPA's willingness to hold public hearings on this proposal in four locations (Atlanta, Georgia; Denver, Colorado; Washington, DC; and Pittsburgh, Pennsylvania) from July 29 through August 1, 2014, we are writing to urge the Administration to carefully consider the comments and concerns that were presented at the Atlanta public hearing by Alabamians from all parts of the user spectrum—workers, small business owners, elected officials, civic leaders, farmers, homemakers, and others. Our constituents presented Administration officials with a wide range of legitimate concerns. For example, officials heard compelling arguments explaining why the witnesses believe the EPA's proposal is based on a flawed interpretation of Section 111(d) of the Clean Air Act. As the EPA's proposal even acknowledges, the EPA has never used this provision of the Act in the manner now proposed—a reality that makes relevant the U.S. Supreme Court's recent admonishment:

*"When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy' ... we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance."*²

It cannot be seriously argued that the action proposed by the EPA has been expressly authorized by Congress. Indeed, if brought to Congress for a vote now, the EPA's proposal would certainly not be approved.

The Administration's actions have already begun affecting Alabamians. Just this morning, Alabama Power cited federal regulations as the impetus behind its decision to alter operations at seven operating units located within three power plants across the state. As part of these transitions, two coal-fired units at the Green County Electric Generating Plant will be converted to gas-powered units,

¹ 79 Fed. Reg. 34,830 (June 18, 2014).

² *UARG v. EPA*, No. 12-1146, slip. op. at 19 (June 23, 2014).

reducing electric generating capacity by a third and eliminating sixty jobs located in the heart of the Black Belt. These job losses have serious consequences in a region which has faced declining populations, high unemployment rates, as well as a host of infrastructure challenges.

The EPA's proposal, if finalized, would impose enormous costs and burdens on Alabama workers and their families, and would hinder our global economic competitiveness. The impact will be felt the deepest in states—like ours—where fossil fuels provide a significant share of our electricity generation. The Administration's claims that energy costs will not be impacted by this proposal ring hollow. Simple economics suggest that the EPA's plan will undoubtedly increase electricity prices, which will hinder—not help—economic growth. Alabama has historically seen lower than average energy costs, in part because our state has been blessed with an abundance of natural resources that can be harnessed to power our homes and businesses and to make life better for our citizens.

Alabamians are also deeply troubled by the prospect that the EPA's proposal will further erode the primary role of the states in managing electricity generation and determining the mix of energy sources that work best for them in their specific circumstances. In Alabama, our electricity is generated from a range of sources—nuclear, coal, natural gas, hydropower and renewables. Those decisions should not be dictated by EPA officials in Washington, D.C. Perhaps ironically, the EPA's chosen formula for establishing CO₂ emission reduction targets disadvantages states with nuclear power, which is the nation's most significant source of emission-free electric generation.

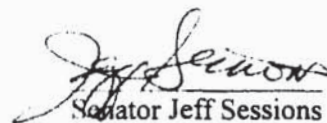
Moreover, Alabamians expressed to Agency officials their beliefs that the EPA gave activist environmental groups a special role in crafting this proposal. In fact, in an article entitled "Environmentalists Drew Emissions Blueprint," the New York Times recently reported³ that the EPA's Section 111(d) proposal is a "remarkable victory for the Natural Resources Defense Council"—an activist environmental organization with known anti-coal and anti-nuclear viewpoints. The article explains that the EPA "used as its blueprint the work of" this outside group. Indeed, a review of recent NRDC proposals for regulating CO₂ emissions from power plants closely resembles the proposal issued by EPA. These are just a few examples of the myriad of concerns—legal, technical, environmental, and economic—that have been raised in recent weeks in response to the EPA's proposal.

In light of the foregoing, we urge the Administration to listen closely to those who came from our great state to discuss the adverse consequences of these recent policies and proposals on their families, their jobs, and their communities.

Sincerely,



Senator Richard Shelby



Senator Jeff Sessions

³ http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r_0

15-001-0913

United States Senate

WASHINGTON, DC 20510

June 30, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

The Honorable Dr. Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Administrator McCarthy, Secretary Moniz, and Secretary Vilsack:

We write to support biomass energy as a sustainable, responsible, renewable, and economically significant energy source. Federal policies across all departments and agencies must remove any uncertainties and contradictions through a clear, unambiguous message that forest bioenergy is part of the nation's energy future.

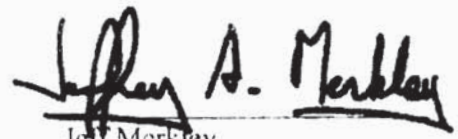
Many states are relying on renewable biomass to meet their energy goals, and we support renewable biomass to create jobs and economic growth while meeting our nation's energy needs. A comprehensive science, technical, and legal administrative record supports a clear and simple policy establishing the benefits of energy from forest biomass. Federal policies that add unnecessary costs and complexity will discourage rather than encourage investment in working forests, harvesting operations, bioenergy, wood products, and paper manufacturing. Unclear or contradictory signals from federal agencies could discourage biomass utilization as an energy solution.

The carbon neutrality of forest biomass has been recognized repeatedly by numerous studies, agencies, institutions, legislation, and rules around the world, and there has been no dispute about the carbon neutrality of biomass derived from residuals of forest products manufacturing and agriculture. Our constituents employed in the biomass supply chain deserve a federal policy that recognizes the clear benefits of forest bioenergy. We urge you to ensure that federal policies are consistent and reflect the carbon neutrality of forest bioenergy.

Sincerely,



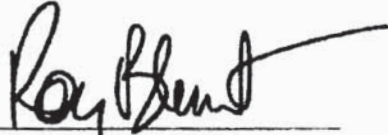
Susan M. Collins
United States Senator



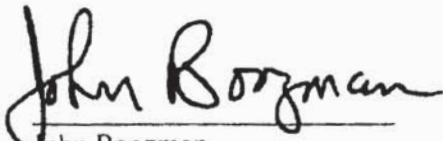
Jeff Merkley
United States Senator



Kelly Ayotte
United States Senator



Roy Blunt
United States Senator



John Boozman
United States Senator



Richard Burr
United States Senator



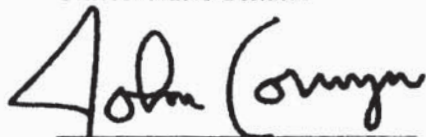
Shelley Moore Capito
United States Senator



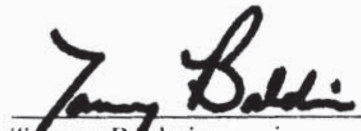
Bill Cassidy
United States Senator



Thad Cochran
United States Senator



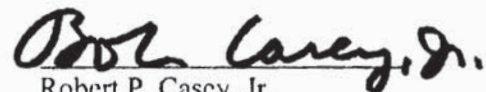
John Cornyn
United States Senator



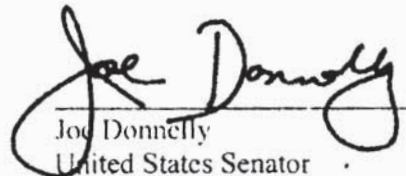
Tammy Baldwin
United States Senator



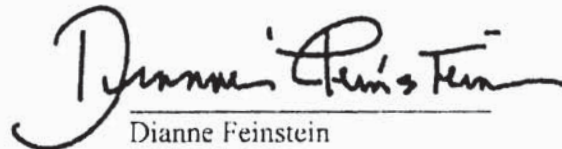
Sherrod Brown
United States Senator



Robert P. Casey, Jr.
United States Senator



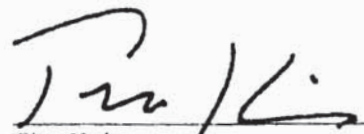
Joe Donnelly
United States Senator



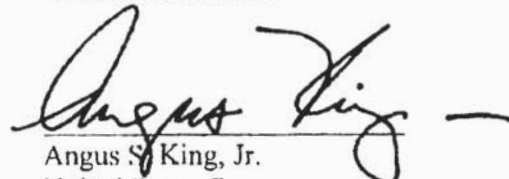
Dianne Feinstein
United States Senator



Al Franken
United States Senator



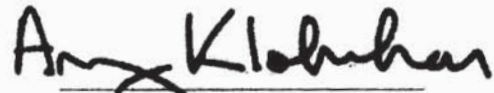
Tim Kaine
United States Senator



Angus S. King, Jr.
United States Senator



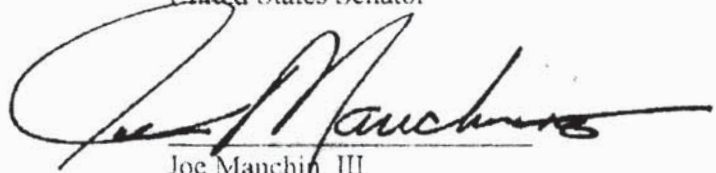
Tom Cotton
United States Senator



Amy Klobuchar
United States Senator



Mike Crapo
United States Senator



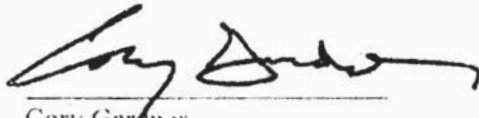
Joe Manchin, III
United States Senator



Steve Daines
United States Senator



Barbara A. Mikulski
United States Senator



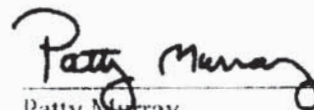
Cory Gardner
United States Senator



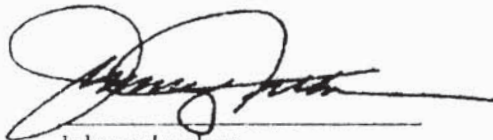
Claire A. McCaskill
United States Senator



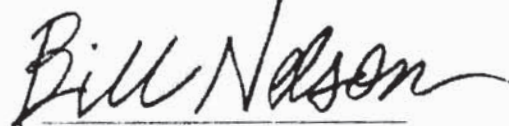
Lindsey Graham
United States Senator



Patty Murray
United States Senator



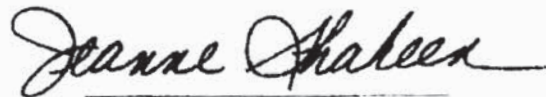
Johnny Isakson
United States Senator



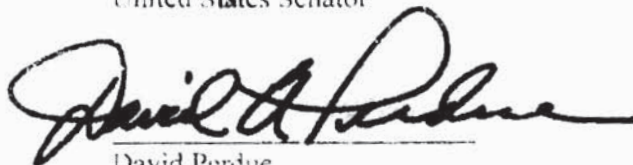
Bill Nelson
United States Senator



Ron Johnson
United States Senator



Jeanne Shaheen
United States Senator



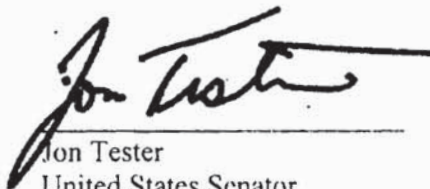
David Perdue
United States Senator



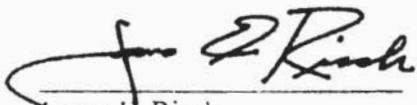
Debbie Stabenow
United States Senator



Rob Portman
United States Senator



Jon Tester
United States Senator



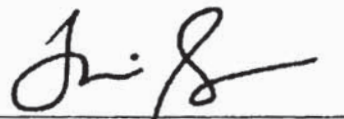
James L. Risch
United States Senator



Mark R. Warner
United States Senator



Jeff Sessions
United States Senator



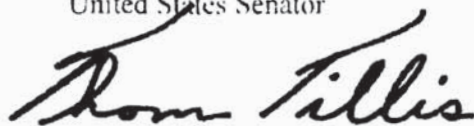
Tim Scott
United States Senator



John Thune
United States Senator



Richard C. Shelby
United States Senator



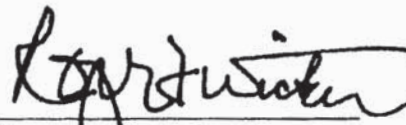
Thom Tillis
United States Senator



Patrick J. Toomey
United States Senator



David Vitter
United States Senator



Roger F. Wicker
United States Senator



December 23, 2015

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your June 30, 2015, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy, U.S. Department of Agriculture Secretary Thomas J. Vilsack, and U.S. Department of Energy Secretary Ernest Moniz, regarding the role of forest bioenergy in meeting our Nation's energy and climate goals. They have asked us to respond on their behalf.

The President's Climate Action Plan and All-of-the-Above Energy Strategy lay a foundation for a clean energy future and foster expansion of renewable energy, including biomass. At the same time, the President's Climate Action Plan highlights the critical role that America's forests play in addressing carbon pollution in the United States. Our agencies agree that production and use of biomass energy can be an integral part of regimes that promote conservation and responsible forest management. States also recognize the importance of forests, and many have been developing a variety of forest and land use management policies and programs that both address climate change and foster increased biomass utilization as part of their energy future.

Recent EPA regulatory action and scientific work on assessing biogenic carbon dioxide (CO₂) emissions from stationary sources is part of this broad climate strategy. In August 2015, EPA released the final Clean Power Plan (CPP), which describes the ways in which the use of biomass may be a component of state plans. For example, in the CPP, EPA generally acknowledges the benefits of waste-derived biogenic feedstocks and certain forest- and agriculture-derived industrial byproduct feedstocks and expects that these feedstocks would likely be approvable in a state plan. To support states and stakeholders in incorporating bioenergy in their state plans, EPA plans to hold a public workshop in early 2016 for stakeholders to share their successes, experiences, and approaches to deploying biomass in ways that have been, and can be, carbon beneficial. In addition, EPA has also developed a revised *Framework for Assessing Biogenic Carbon Dioxide from Stationary Sources* that can assist states when considering the role of biomass in state plan submittals. The revised report takes into account the latest information from the scientific community and other stakeholders, including findings from EPA's Science Advisory Board (SAB) review of the first draft framework. EPA is continuing to refine its accounting work through a second round of targeted peer review with the SAB in 2015.¹

¹ The revised draft Framework and SAB peer review request memo can be found at: <http://epa.gov/climatechange/ghgemissions/biogenic-emissions.html>. Information regarding the SAB peer review process can be found at: www.epa.gov/sab/.

USDA recognizes the important role forest management and biomass will play in both our energy and climate future. Increasing the demand for wood for energy results in more forest area, more forest investment, and potential greenhouse gas reductions. To increase forest stocks and improve forest health and management, we must develop incentives that keep working forestland forested and support forest restoration, reforestation, and afforestation. This is all the more critical, especially amid development pressures and increasing threats from insects, disease, and wildfire.

Under USDA's Wood to Energy Initiative, USDA has supported over 230 Wood Energy projects through nearly \$1 billion in grants, loans, and loan guarantees since 2009 through a host of programs, including the Renewable Energy for America Program and the Biomass Crop Assistance Program. USDA has established state-wide wood energy teams in 19 states that are helping deliver needed technical and financial assistance to expand those markets further.

DOE recognizes the importance of wood as a renewable energy source. DOE is leading efforts to develop and demonstrate technologies for producing cost-competitive advanced biofuels from non-food biomass resources, including forest and wood resources, algae, and waste streams. These efforts require rigorous scientific study and evaluation to understand the impacts of various biomass feedstocks, especially woody resources, to optimize the benefits of their use.


In the context of the President's Climate Action Plan and All-of-the-Above Energy Strategy, DOE, EPA, and USDA will work together to ensure that biomass energy plays a role in America's clean energy future. As stated in your letter, the American people deserve a Federal policy that recognizes the benefits of forest bioenergy. Together, our agencies are working carefully and consistently to quantify the benefits of using wood for energy.

Again, thank you for your letter. If you have further questions, please contact us, or your staff may contact Ms. Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806; Ms. Jaime Shimek, DOE's Deputy Assistant Secretary for Senate Affairs at (202) 586-5450; or Mr. Todd Batta, USDA's Assistant Secretary for Congressional Relations at (202) 720-7095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection
Agency



Dr. David T. Danielson
Assistant Secretary
Office of Energy Efficiency
and Renewable Energy
U.S. Department of Energy



Dr. Robert Johansson
Chief Economist
U.S. Department of Agriculture

UNITED STATES SENATE

Office of the Secretary
 Senate Office Building
 100 Senate Office Building
 Washington, DC 20510
 205-312-1000
 www.senate.gov

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 100 Senate Office Building
 Washington, DC 20510
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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6125

November 20, 2015

The Honorable Mathy Stanislaus
 Assistant Administrator
 Office of Solid Waste and Emergency Response
 U.S. Environmental Protection Agency
 Ariel Rios Federal Building
 1200 Pennsylvania Ave., NW
 Washington, DC 20460

Re: The Regulatory Status of Railroad Ties

Dear Administrator Stanislaus:

Last year, EPA proposed to add additional fuels to the list of categorical non-waste fuels under 40 C.F.R. 241.4. (*Proposed Additions to List of Section 241.4 Categorical Non-Waste Fuels*, 79 Fed. Reg. 21006 (Apr. 14, 2014)). Fuels on this list may be combusted for energy recovery by facilities subject to EPA's 2013 final "Boiler MACT" rule, *National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters*; Final Rule, 78 Fed. Reg. 7138 (Jan. 31, 2013). It is our understanding that EPA expects to finalize this proposal shortly.

Among the fuels EPA proposed to identify as non-waste fuels are creosote-treated rail ties (CTRTs). It is our understanding that comments submitted on that proposed rule requested EPA to also list three newer types of rail ties that are increasingly being placed into service in addition to or as alternatives to CTRTs, and included extensive data to support that request. These other ties are creosote-borate dual treated rail ties (CBTRTs), copper naphthenate treated rail ties (CNTRTs), and copper naphthenate-borate dual treated rail ties (CNBTRTs).

The data submitted to EPA in comments show that levels of contaminants in CBTRTs, CNTRTs, and CNBTRTs are comparable to or lower than those in traditional fuels and also comparable to or lower than those in CTRTs. EPA has previously determined that "borate-treated wood meets the legitimacy criterion [set forth in 40 C.F.R. §241.4] on the level of contaminants and comparability to traditional fuels." (*Identification of Non-Hazardous Secondary Materials That Are Solid Waste*; Final Rule, 76 Fed. Reg. 15456, 15484, (Mar. 21, 2011)). The comments also include substantial information showing that these newer materials are processed in the same manner as CTRTs, are managed as a valuable commodity, and meet the meaningful heating value threshold relied upon in the final rule listing CTRTs as a non-waste fuel.

Assistant Administrator Stanislaus
November 20, 2015
Page 2

It is our hope that EPA will list these newer types of ties in the forthcoming final rule. However, if EPA does not take final action on these ties at that time, we request EPA to summarize the information received, explain whether that information meets the standard for listing a material as a non-waste fuel, and, assuming that it does, use the preamble of the forthcoming final rule to express its intention to list CBTRTs, CNTRTs, and CNBTRTs as categorical non-waste fuels under 40 C.F.R. §241.4 in the very near future.

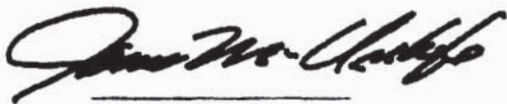
In addition, given that these newer materials have favorable endurance and environmental characteristics, have been in use for a relatively short time, and are in the early stages of their useful primary life, it is unlikely that many will be removed from service in the near future. However, given that rail ties treated with different types of preservatives cannot be distinguished from one another without extensive testing, even the possibility that a few newer ties may be mixed with CTRTs may cause combustors to stop combusting rail ties until EPA promulgates a new rule, resulting in unnecessary stockpiling, or even land disposal, of these biomass fuels.

To avoid this adverse outcome, we also ask EPA to announce that it will use its enforcement discretion to forgo taking enforcement action against combustors of railroad ties based on a failure to demonstrate what type of rail ties they are combusting, until EPA has the opportunity to address these newer ties through rulemaking. There is ample precedent for such action. *See, e.g.,* 67 Fed. Reg. 18899 (Apr. 17, 2002) (enforcement discretion for failure to report releases of certain pollutants until an administrative reporting exemption was promulgated in 2006).

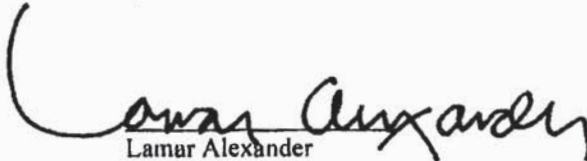
Finally, we request EPA to facilitate state efforts to utilize the one-year extension available under section 112(i)(3)(B) of the Clean Air Act, 42 U.S.C. §7412(i)(3)(B) to enable facilities to continue combusting rail ties beyond the January 31, 2016 effective date of the Boiler MACT final rule.

Thank you to your attention to this matter. Please let us know how you intend to address this issue by December 4, 2015.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

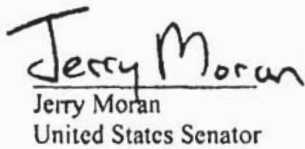


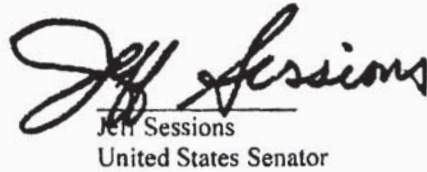
Lamar Alexander
United States Senator

Assistant Administrator Stanislaus
November 20, 2015
Page 3


Charles Grassley
United States Senator


Mike Crapo
United States Senator


Jerry Moran
United States Senator


Jeff Sessions
United States Senator

cc: Stan Meiburg, EPA
Barnes Johnson, EPA
Betsy Devlin, EPA
Jim Laity, OMB
Kevin Bromberg, SBA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 29 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Jeff B. Sessions, III
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of November 20, 2015, to the U.S. Environmental Protection Agency (EPA) concerning the addition of three types of railroad ties to the list of categorical non-waste fuels in 40 CFR 241.4. The three types of treated railroad ties referenced in your letter are dual treated creosote-borate ties, copper naphthenate ties, and dual-treated copper naphthenate-borate ties. You requested that these materials be added to a current final rulemaking that addresses whether creosote-treated rail ties (CTRTs) are categorical non-wastes when combusted. That rule is currently undergoing EPA and interagency review. In the alternative, you requested that the EPA express its intention to list these materials as categorical non-waste fuels under section 241.4 in the very near future.

Your letter also requested that the EPA facilitate state efforts to use the one-year extension authority provided in section 112(i)(3)(B) of the Clean Air Act, 42 U.S.C. § 7412(i)(3)(B), to enable facilities to continue combusting railroad ties beyond the January 31, 2016, effective date of the Boiler MACT final rule. You also asked that the agency use its discretion to forgo taking enforcement action against combustors of railroad ties until the three types of railroad ties are addressed in a future rulemaking.

In an August 21, 2015, letter to Barnes Johnson, the EPA's Director of the Office of Resource Conservation and Recovery, the Treated Wood Council (TWC) requested the agency consider a categorical non-waste determination for dual treated creosote-borate railroad ties, copper naphthenate treated railroad ties, and dual treated copper naphthenate-borate railroad ties. In support of this request, the TWC submitted supplemental data on the three types of railroad ties. Based on information provided to date, we believe these three types of treated railroad ties may be candidates for a proposed categorical non-waste listing and expect to begin development of a proposed rule regarding these listings in the near future.

The EPA action on the three types of treated railroad ties, however, must follow required rulemaking processes, under the Administrative Procedure Act. These processes include public

notice and opportunity for comment. Inclusion of the three types of treated railroad ties within the current final rulemaking would not afford the public these opportunities.

Your letter also indicated that these newer types of treated railroad ties have favorable endurance and environmental characteristics. However, because railroad ties treated with different types of preservatives cannot be distinguished from one another without extensive testing, a few of the new types of railroad ties may have been mixed in with CTRTs (which comprise the majority of the railroad ties today). Such mixing may cause combustors to stop burning railroad ties altogether until a new rule on the additional three types of railroad ties is promulgated. Your letter expressed concern that this would result in unnecessary stockpiling or land disposal of the railroad ties.

The agency has concluded based on information it has now, that if CTRTs are determined to be categorical non-wastes under the current final rulemaking, CTRTs with very small (i.e., *de minimis*) amounts of the newer three types of railroad ties could be combusted as non-waste fuels even if there is no categorical listing rule for that new material. This conclusion is consistent with statements concerning construction and demolition (C&D) wood in the March 2011 final Non-Hazardous Secondary Materials rule where the EPA acknowledged that C&D-derived wood may meet the legitimacy criteria even if it contains *de minimis* amounts of contaminants (76 FR 15486).

Combustors may also make self-determinations of their material under 40 CFR 241.3(b). In order to be considered a non-waste fuel under that section, a combustion source may ensure the appropriate regulatory criteria in 241.3(b)(4) are met and make a non-waste determination for the treated railroad ties produced from processed, discarded non-hazardous secondary materials. If a source combusting these materials cannot make this determination, it may burn the fuel under solid waste incineration standards issued under Clean Air Act section 129, 42 U.S.C. §7429. In either case, the railroad ties can be used as a fuel in lieu of landfilling if the applicable emissions standards are met.

Regarding the use of a compliance extension, the applicable statutory provision at 42 U.S.C. § 7412(i)(3)(B) is implemented in the EPA's regulations at 40 CFR § 63.6(i)(4). The requirements for the compliance extension are:

- The request generally must be submitted no later than 120 days before the compliance date.
- The request must be based on additional time needed for the installation of controls.
- The request may be submitted after the 120 day deadline, if the need for the compliance extension request arose after the submittal deadline, and before the otherwise applicable compliance date and the need arose due to circumstances beyond the reasonable control of the owner or operator.

As discussed previously, we believe that sources burning treated railroad ties would be subject to emissions standards contained in the Boiler MACT if they meet the non-waste criteria and make a self-determination under 40 CFR 241.3(b). There is nothing in your letter that indicates that additional time is needed for the installation of controls to comply with the Boiler MACT, which

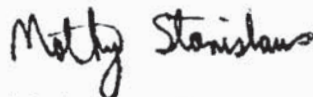
must be demonstrated for purposes of an extension of the compliance date. However, if a specific source needs additional time for the installation of controls, since the deadline for the 120 day submittal has passed, those sources should work with their state permitting authority as soon as possible. We emphasize that such requests received after the 120 day deadline must demonstrate that the "need arose due to circumstances beyond reasonable control of the owner or operator."

We coordinated with the Office of Enforcement and Compliance Assurance and, for the reasons described above, there is no need or basis for the agency to issue a "no action assurance" letter to allow for this activity during the time the agency evaluates the need for rulemaking for additional categorical determinations. In addition, a no action assurance should be recognized as an exceptional and unusual action taken to avoid extreme risks to public health or safety, such as to address an emergency or other urgent hardship, and not as a substitute for an open and public rulemaking process such as those currently underway.

In summary, the EPA's anticipated rulemakings on the three additional types of treated railroad ties, the agency's determination that CTRTs can contain de minimis amounts of these additional materials, the option of pursuing self-determinations under 40 CFR 241.3(b), as well as recommendations regarding the applicability of compliance extensions under 42 U.S.C. § 7412(i)(3)(B), should address your concerns relative to combustion of these treated railroad ties as non-waste fuels.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at snyder.raquel@epa.gov, or at (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, slightly stylized font.

Mathy Stanislaus
Assistant Administrator
Office of Land and Emergency Management

Congress of the United States

Washington, DC 20510

February 26, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Ms. Heather McTeer Toney
Regional Administrator, Region 4
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Avenue, SW
Atlanta, GA 30303

Dear Madam Administrator and Ms. Toney:

We write to express serious concern regarding the Environmental Protection Agency's (EPA) administration of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as Superfund. In particular, EPA's designation of "potentially responsible parties" (PRPs) through an "air deposition" theory of liability appears to rest on questionable legal authority and may set a troubling precedent for all facilities in the United States which generate air emissions subject to the Clean Air Act and other relevant statutes.

As you are aware, on September 22, 2014, EPA proposed placing the 35th Avenue site in North Birmingham on the National Priorities List. According to the EPA Hazard Ranking System record that accompanied the proposal, "[a]ir is the primary source of deposition within the 35th Avenue site . . . from smokestacks and windblown particles from process fines and other stockpiled material." In conjunction with this air deposition theory, the agency has designated several facilities as PRPs and has informed the facilities that they may be forced to undertake cleanup actions or incur financial liability for costs associated with any cleanup of the site.

We are mindful of EPA's repeated attempts to increase the scope of federal regulatory authority, and we fear the application of the air deposition theory to supposed "arrangers" under CERCLA represents a significant expansion of the agency's Superfund enforcement powers. Arranger liability attaches to any person who disposes of hazardous substances,¹ with "disposal" defined as the "discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any

¹ 42 U.S.C. § 9607(a)(3).

constituent thereof may enter the environment or be *emitted into the air* or discharge into any waters.”²

A plain reading of this definition demonstrates that, to the extent air emissions may be a factor in determining arranger liability, such emissions must result directly from the discharge of solid or hazardous waste directly into or onto any land or water. In other words, industrial air emissions from lawful sources are to be regulated under the Clean Air Act, not CERCLA. However, EPA seems intent on pressing the air deposition theory in North Birmingham, while having also endorsed the theory in an amicus curiae brief filed recently in the Ninth Circuit Court of Appeals. EPA’s legal positions raise serious questions regarding the agency’s understanding of its statutory authority.

Similar reservations are expressed in the enclosed resolution, adopted jointly by the Alabama House of Representatives and Alabama Senate and approved by the Governor of Alabama on June 9, 2015. The resolution describes the 35th Avenue site proposal and provides that EPA is “attempting to impose a novel and overbroad ‘air deposition’ theory of Superfund liability which would allow EPA to pursue industrial facilities for contamination at non-contiguous properties on the basis of air emissions which are subject to the federal Clean Air Act and authorized by a valid air operating permit.” The resolution notes further that EPA’s “broad air deposition theory would allow EPA to order businesses to clean up hazardous contamination within an indefinite area before proving that the business was actually responsible.” Thus, we are especially concerned with the due process implications associated with this charge.

The resolution also suggests that EPA is pursuing the air deposition theory “as an illicit means for funding policy initiatives which are outside its regulatory authority.” Indeed, the 35th Avenue site proposal appears to be part of an “environmental justice” initiative for EPA to become a *de facto* redevelopment authority in Birmingham.³ Tellingly, the proposal follows a 2011 planning document in which EPA announced its intent to “go beyond traditional injunctive relief to stop illegal pollution . . . and, where appropriate and agreed to by defendants, to include Supplemental Environmental Projects . . . that provide benefits to communities,” as well as to “leverage benefits resulting from enforcement activities.”⁴

Finally, the resolution describes prior objections to the 35th Avenue site proposal from the Alabama Attorney General and Alabama Department of Environmental Management (ADEM). For example, ADEM repeatedly informed EPA that it did not concur with the proposed listing, as the Attorney General explained in a letter provided

² *Id.* § 6903(3) (emphasis added).

³ See Environmental Protection Agency, Region 4 Superfund, Annual Report, FY 2014 at 5.


⁴ Environmental Protection Agency, *Plan EJ 2014: Advancing Environmental Justice Through Compliance and Enforcement* (Sept. 2011).

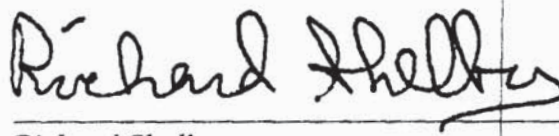
to EPA on January 20, 2015. Under the 1997 "Fields Memorandum," ADEM's decision to withhold concurrence required EPA to work closely with the State of Alabama prior to formally proposing a site for the National Priorities List. Yet the Attorney General's comment letter indicates that EPA neglected to follow the procedure outlined in the Fields Memorandum, suggesting agency disregard for state coordination and input during the site proposal process.

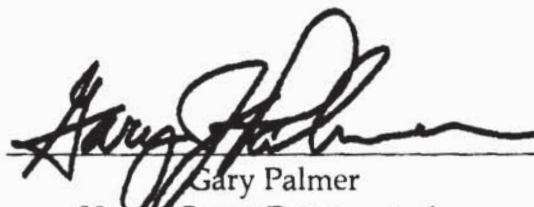
EPA's air deposition theory and corresponding proposal to place the 35th Avenue site on the National Priorities List raise important legal and scientific questions and present substantial risk for businesses that may have little to no responsibility for site contamination. For these reasons, the state Legislature, Governor, and Attorney General for Alabama have each requested EPA to reconsider its position.

We believe these requests are justified, and we urge EPA to give them careful attention. Furthermore, so that we may confirm the agency's appropriate understanding of CERCLA and related legal authorities, we request your staff to schedule a meeting with our offices at the earliest opportunity to discuss the concerns raised above and in the enclosed resolution.

Yours very truly,


Jeff Sessions
United States Senator


Richard Shelby
United States Senator


Gary Palmer
United States Representative

cc: Sen. James M. Inhofe, Chairman, Committee on Environment and Public Works
Sen. Thad Cochran, Chairman, Committee on Appropriations
Sen. M. Michael Rounds, Chairman, Subcommittee on Superfund, Waste Management, and Regulatory Oversight, Committee on Environment and Public Works
Sen. Lisa Murkowski, Chairman, Subcommittee on the Interior, Environment, and Related Agencies, Committee on Appropriations

ACT No. 2015- 426

1 SJR97
2 169945-3
3 By Senator Waggoner
4 RFD: Rules
5 First Read: 28-MAY-15



1 SJR97

2
3
4 ENROLLED, SJR97,

5 URGING INCREASED OVERSIGHT OF AND OPPOSITION TO
6 EPA'S ACTIVITIES IN ALABAMA.
7

8 WHEREAS, the Alabama Department of Environmental
9 Management (ADEM) is entrusted by the citizens of Alabama to
10 manage the State's resources in a manner compatible with the
11 environment and the health and welfare of the citizens of the
12 State; and

13 WHEREAS, ADEM oversees a comprehensive and
14 coordinated program of environmental management capable of
15 protecting Alabama's citizens from environmental and health
16 hazards; and

17 WHEREAS, ADEM has an exemplary record of applying
18 its regulatory programs in a fair and consistent manner; and

19 WHEREAS, Alabama depends on strong, viable
20 businesses to provide jobs, stability, and tax revenue for its
21 diverse communities; and

22 WHEREAS, businesses which comply with all applicable
23 federal, state, and local environmental obligations should be
24 free to operate without persistent interference from the

1 United States Environmental Protection Agency (EPA) and
2 others; and

3 WHEREAS, EPA has applied its enforcement authority
4 arbitrarily and unfairly in some of its activities in North
5 Birmingham and Tarrant; and

6 WHEREAS, EPA has proposed the "35th Avenue Site" in
7 North Birmingham for inclusion on the National Priority List
8 (NPL) of Superfund sites, despite inadequate technical and
9 legal basis for doing so and without the State's support; and

10 WHEREAS, EPA is attempting to impose a novel and
11 overbroad "air deposition" theory of Superfund liability which
12 would allow EPA to pursue industrial facilities for
13 contamination at non-contiguous properties on the basis of air
14 emissions which are subject to the federal Clean Air Act and
15 authorized by a valid air operating permit; and

16 WHEREAS, EPA's broad air deposition theory would
17 allow EPA to order businesses to clean up hazardous
18 contamination within an indefinite area before proving that
19 the business was actually responsible; and

20 WHEREAS, EPA is pursuing this air deposition theory
21 as an illicit means for funding policy initiatives which are
22 outside its regulatory authority; and

23 WHEREAS, EPA lacks legal authority under the
24 Comprehensive Environmental Response, Compensation, and

1 Liability Act (CERCLA) or other federal law to impose this
2 theory of air deposition liability; and

3 WHEREAS, the Alabama Attorney General has submitted
4 comments to EPA vigorously objecting to EPA's methods of
5 investigating the 35th Avenue site, assessing its own
6 findings, proposing the site for inclusion on the NPL, and
7 identifying PRPs; and

8 WHEREAS, ADEM has objected to EPA proposing the site
9 for inclusion on the NPL; now therefore,

10 BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH
11 HOUSES THEREOF CONCURRING, That we urge the EPA to reconsider
12 its proposal to include the 35th Avenue site on the NPL
13 without the support of the State.

14 BE IT FURTHER RESOLVED, That we urge EPA to refrain
15 from acting outside of its statutory authority in North
16 Birmingham, Tarrant, and other communities in Alabama, and
17 specifically to abandon its questionable "air deposition"
18 theory of CERCLA liability.

19 BE IT FURTHER RESOLVED, That we urge the Attorney
20 General and ADEM to combat the EPA's overreach and request
21 that the Governor and Alabama's Congressional Delegation take
22 any and all steps within their power to ensure that EPA's
23 activities in Birmingham, and elsewhere throughout the state,
24 remain squarely within its express statutory authority and are

SJR97

1 appropriate for a science-based, regulatory agency entrusted
2 with regulating American businesses.

3 BE IT FURTHER RESOLVED, That we support the comments
4 and objections offered by the Attorney General and ADEM in
5 response to EPA's overreaching, and we support both the
6 Attorney General and ADEM as they continue in their legal
7 opposition to the EPA's overreach.

SJR97

Kay Ivey

President and Presiding Officer of the Senate

Tommy Blanton

Speaker of the House of Representatives

SJR97

Senate 02-JUN-15

I hereby certify that the within Senate Joint Resolution
originated in and was adopted by the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Adopted: 03-JUN-15

By: Senator Waggoner

APPROVED June 9, 2015

TIME

5:00pm

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2015-426
Bill Num....: SJR-97

Recv'd 06/10/15 03:58pmSLF

REPORT OF RULES COMMITTEE
This resolution having been referred by
the House to its standing committee on
_____ RULES _____ was acted upon
by such committee in session, and
returned therefrom to the House with
the recommendation that it be adopted.

Mac McCall Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 29 2016

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20515

Dear Senator Sessions:

Thank you for your February 26, 2016, letter to the U.S. Environmental Protection Agency's Administrator, Gina McCarthy, and myself regarding the 35th Avenue Superfund Site (Site) located in Birmingham, Jefferson County, Alabama. We appreciate your attention to this issue, as well as that of the State of Alabama (State). Based on our reading of your letter, we understand you to be raising three concerns related to the EPA's proposed listing of the Site on the National Priorities Listing (NPL) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund): (1) the Agency's designation of Potentially Responsible Parties (PRPs) through an "air deposition" theory of liability; (2) the Agency's efforts related to environmental justice; and (3) the Agency's coordination with the State prior to and following proposal of the Site to the NPL.

The EPA believes that it is critical that the State and all of the parties involved understand that the listing of a site on the NPL and enforcement against PRPs under any type of liability theory are separate and distinct activities based on different authorities under Superfund. Superfund liability is not considered when evaluating a site for listing on the NPL, nor is liability established or apportioned based on the decision to propose or finalize a site on the NPL.

With respect to your concerns about the EPA's enforcement approach and/or theories of liability against any PRP associated with the Site, unfortunately the EPA cannot engage in any level of discussions with third parties, including members of Congress, as articulated in the Memorandum from Granta Y. Nakayama, dated March 8, 2006, and titled "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" <https://www.epa.gov/enforcement/restrictions-communicating-outside-parties-regarding-enforcement-actions>. However, I am able to address the remaining concerns raised in your letter, as well as any additional questions you may have regarding the environmental conditions and the EPA response efforts to date at the Site.

On September 22, 2014, the EPA proposed to include the 35th Avenue Site on the NPL. The identification of sites for listing on the NPL is intended to guide the EPA in: a) determining which sites warrant further investigation to assess the nature and extent of the human health and environmental risks associated with a site; b) identifying what CERCLA-financed remedial actions may be appropriate; c) notifying the public of sites the EPA believes warrant further investigation; and d) serving notice to PRPs that the EPA may initiate CERCLA-financed remedial action. As the D.C. Circuit Court of Appeals has held, the NPL serves primarily as an informational tool for use by the EPA in identifying, quickly and inexpensively, those sites that appear to present a significant risk to public health or the environment. See *CTS Corp. v. EPA*, 759 F.3d 52, 56 (D.C. Cir. 2014); *Carus Chem. Co. v. EPA*, 395 F.3d 434, 441 (D.C. Cir. 2005); *Wash. State Dep't of Transp. v. EPA*, 917 F.2d 1309, 1310 (D.C. Cir. 1990).

In order to determine whether a site may be proposed or added to the NPL, the EPA uses the Hazard Ranking System (HRS). Sites that score greater than 28.50 based on the HRS are eligible for the NPL. The HRS score

scientifically reflects an assessment of the relative threat to human health and the environment posed by the release or threatened release of hazardous substances at a site. The 35th Avenue site's score at the time of proposal to the NPL was 50.00. Consistent with CERCLA, this score relied solely on the Site's soil exposure pathway, due to widespread soil contamination in the residential neighborhoods of Fairmont, Collegeville and Harriman Park. This was based on results of sampling events conducted in 2013 and 2014 in these neighborhoods that revealed elevated concentrations of lead, arsenic and Benzo (a) pyrene. Environmental justice concerns are not a part of a site's HRS score or used to qualify a site for NPL listing.

In the HRS supporting materials the EPA identified several facilities as the possible sources of contamination detected in residential soil due to their proximity to the Area of Contamination (AOC), the type of plant, the processes utilized at the plant, and the history of releases contributing to the commingled contamination of the AOC over the period of many years. Identification of potential sources of contamination is a typical part of HRS supporting materials. This does not, however, establish liability. Liability is established at a site through a separate process using different CERCLA authorities. While the Agency's investigation is still underway, the presence of contaminants in the residential neighborhoods is potentially due to a number of routes, including use of solid waste as fill material, storm water runoff from facilities, continued migration of contaminants from frequent flooding in the area, and facility air emissions. These emissions occurred prior to, in absence of or in exceedance of Clean Air Act permits.

A public comment period on the proposed NPL listing was held from September 22, 2014 to January 22, 2015. The EPA received numerous public comments both in support and in opposition to a final listing, including letters from the Alabama Department of Environmental Management (ADEM) and the Alabama Attorney General. In those letters, the State requested review of the EPA's decision through the dispute resolution process outlined in the July 25, 1997 OSWER memorandum titled, "Coordinating with the States on National Priorities List Decisions – Issue Resolution Process." Prior to making a final listing decision, the EPA must consider all comments received on a proposed NPL site and respond to significant comments in writing. After consideration of all comments, if the Site still qualifies for listing on the NPL, the EPA will welcome informal deliberations with ADEM. Depending on the outcome of those deliberations, as appropriate, the EPA will follow the process outlined in the above "Issue Resolution Process" memorandum. The EPA is committed to consultations with the State prior to making any future decision, for example, to add the Site on the NPL through a final rule, to pursue additional cleanup approaches, or to withdraw the proposal to list the Site.

I believe that we share the common goal to protect and improve the quality of life for Alabama residents. As such, the EPA welcomes any further discussions on the proposed listing of the 35th Avenue site on the NPL or any other issues related to the environmental conditions and ongoing EPA response efforts at the Site. I have directed my staff to arrange for a meeting with your office at your earliest convenience. If you have additional questions please contact Allison Wise at (404) 562-8327.

Sincerely,



Heather McTeer Toney
Regional Administrator

cc: Mathy Stanislaus, OLEM

Franklin Hill, Superfund Division

United States Senate
WASHINGTON, DC 20510-0104

January 18, 2007

Mr. Stephen L. Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. Johnson:

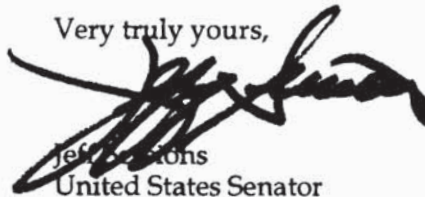
I am writing you to express my concern regarding continuing delays in the implementation of the Army's environmental remediation program at Redstone Arsenal. If allowed to continue, these delays will cause our Base Realignment and Closure plans to be delayed, resulting in the commitment of significantly more tax dollars to complete implementation.

I urge you to consider the taking the following actions that I believe will expedite the implementation of the environmental remediation program.

- Expedite completion of the Federal Facility Agreement (FFA) as quickly as possible in order to resolve redundant regulation and scoping issues.
- Provide adequate staffing to complete the timely review of environmental program documents within the spirit of the draft Federal Facilities Agreement.
- Allow documentation to be completed under the guidance available when the document was initiated rather than require all new guidance to be incorporated as it is developed.
- Ensure that enforcement and remedial actions are consistent with other DoD, Federal, non-Federal, and Superfund-managed NPL sites within Region 4, with due consideration given to the current and reasonably expected future uses at the installation.

Thank you for your prompt consideration. I look forward to your response and the timely resolution of this matter.

Very truly yours,



Jeff Sessions
United States Senator

JS:jm



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 16 2007

The Honorable Jeff Sessions
United States Senate
SR-335 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

Thank you for your January 18, 2007, letter to Stephen L. Johnson, Administrator of the U.S. Environmental Protection Agency (EPA), expressing your concerns regarding continuing delays in the implementation of the Army's environmental remediation program at Redstone Arsenal. Your letter was forwarded to me for a response.

In the letter, you suggested the following actions that EPA could take to expedite the remediation program at Redstone Arsenal: 1) expedite completion of the Federal Facilities Agreement (FFA); 2) provide adequate staffing to complete the timely review of documents; 3) allow documents to be completed under the guidance available when the document was initiated; and 4) ensure that enforcement and remedial actions are consistent with other DoD, Federal, non-Federal, and Superfund-managed National Priority List (NPL) sites within Region 4. I will address each of these suggestions in the following paragraphs.

On December 19-20, 2006, representatives from EPA, the Army, and the Alabama Department of Environmental Management (ADEM) met to conclude the negotiation of the Redstone Arsenal FFA. In that session, all outstanding FFA issues were resolved to the satisfaction of all parties, and the complete document is anticipated to be routed to the respective agency headquarters for signature by May 1, 2007. The FFA will provide a framework for the remediation process at Redstone Arsenal, with clearly stated roles and responsibilities of Redstone Arsenal, ADEM, and EPA project managers. In addition, the FFA requires that Redstone Arsenal submits and annually updates a Site Management Plan with remediation schedules and milestones which are agreed to by all parties. Finalization of the Redstone Arsenal FFA should serve to resolve redundant regulation and scoping issues.

Over the past two months, Region 4 has provided additional staff for EPA's oversight of Redstone Arsenal's environmental remediation program. Three Remedial Project Managers (RPMs) in Region 4's Federal Facilities Branch are now assigned to the project, as well as additional technical support staff (ecological and human health risk assessors, hydrogeologists and chemists) from other areas of the Superfund Division. In addition, Region 4 has allocated approximately \$250,000 to the Remedial Oversight Contract for Fiscal Year 2007 to provide technical support to the RPMs for document reviews and oversight of field activities conducted

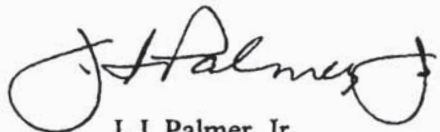
by the Army at Redstone Arsenal. We believe these additional resources will result in more efficient and timely review and oversight of all documents and activities associated with Redstone Arsenal's environmental remediation program.

There have been some instances where chemical-specific screening, ecological or human health based benchmarks have been updated while various Redstone Arsenal remediation documents were in preparation. As is our standard operating practice, EPA required that these updated standards be incorporated in those documents to ensure that Redstone Arsenal's cleanup efforts would result in maximum protection of human health or the environment. In the future, my staff will make every effort to collaborate closely with Redstone Arsenal personnel to make certain that new ecological or human health benchmarks or standards are included in documents under preparation, only if such inclusion will result in a more protective cleanup action.

With respect to your final point, all enforcement and remedial actions which occur at Redstone Arsenal are consistent with other DoD, Federal, non-Federal, and Superfund-managed NPL sites within Region 4. The soon-to-be-finalized FFA for Redstone Arsenal contains many provisions which ensure consistency in enforcement and remedial actions during the cleanup process. In addition, the cleanup process at Federal Facilities often provides for more moderate remedies than at non-Federal sites on the NPL. For example, many remedial actions at DoD facilities in Region 4, with which EPA is in concurrence, involve the use of Institutional Controls (IC) and Monitored Natural Attenuation (MNA). Both IC and MNA remedies require periodic, long term monitoring, often for decades. The fact that the military services retain control of their installations for the foreseeable future provides assurance to EPA that these monitoring-intensive remedies will be maintained, resulting in maximum protection of human health and the environment. At the same time, IC and MNA remedies are more cost-effective than active, engineered remedies, and allow for more efficient use of resources. More passive and inexpensive remedies, such as ICs and MNA, are used with much less frequency at non-Federal NPL sites, due to uncertainties surrounding future control of the property.

I hope this response has addressed your concerns. If you have questions or need additional information from EPA, please contact me or the Region 4 Office of Congressional and Intergovernmental Relations at (404) 562-8327.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. I. Palmer, Jr.", with a stylized, cursive script.

J. I. Palmer, Jr.
Regional Administrator

cc: Trey Glenn, Director, ADEM

07-000-7724

United States Senate
WASHINGTON, DC 20510-0104

April 30, 2007

Mr. Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. Johnson:

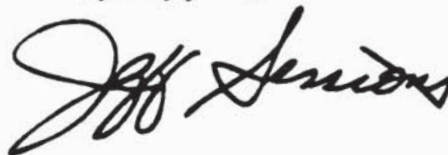
I am writing to express my support for the grant application submitted by the Alabama Department of Environmental Management (ADEM) to the US Environmental Protection Agency.

Recently, ADEM formed a consortium with the cities of Auburn, Demopolis, Selma, Tarrant and Tuskegee for the cleanup of targeted brownfield sites. This funding, if awarded, would enable ADEM to implement its Brownfield Cleanup Revolving Loan Fund, which would allow the agency to provide low interest loans to members of the consortium and possibly additional communities. As you know, this effort would enable these cities to assess and restore contaminated sites in order to promote responsible economic development and community enhancement.

After reviewing the grant application submitted by the Alabama Department of Environmental Management, I am sure you will agree that this project has merit and is worthy of funding. Therefore, I urge your utmost consideration and look forward to a favorable response.

If you have any questions or need additional information, please do not hesitate to contact Michelle Tims, Grants and Projects Director, in my Birmingham office at 205-731-1500.

Very truly yours,



Jeff Sessions
United States Senator

JS:mjt



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 18 2007

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Jeff Sessions
United States Senate
Attn: Michelle Tims
1800 Fifth Avenue North
Birmingham, Alabama 35203-2171

Dear Senator Sessions:

Thank you for your letter of April 30, 2007, supporting the brownfields revolving loan fund grant proposal from the Alabama Department of Environmental Management (ADEM). On behalf of the U.S. Environmental Protection Agency (EPA), I regret to inform you that the proposal from ADEM was not selected to receive a brownfields revolving loan fund grant.

Grant proposals were selected based on the criteria outlined in "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants," which is posted on our brownfields website (www.epa.gov/brownfields). Each proposal was carefully reviewed and evaluated by a selection panel that applies these objective criteria in this highly competitive program. EPA's reliance upon these objective criteria is critical to ensuring that this review process remains open and fair. Although the proposal from ADEM was not selected in this round, we encourage ADEM to reevaluate its proposal and resubmit it for consideration during the FY2008 competition, should funding become available.

Thank you again for your interest in EPA's Brownfields Program. If you have any questions, you may contact me, or your staff may contact Amy Kover in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0555.

Sincerely,


Susan Parker Bodine
Assistant Administrator



0AK-07-6W-7295

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 10 1995

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

I am pleased to inform you that one of your constituents, McWane Science Center, has been highlighted in our new report, *Achievements in Stratospheric Ozone Protection: Progress Report*, in recognition of the contributions they have made by promoting sun safety.

As we approach the 20th anniversary of the Montreal Protocol, the achievements of our many partners helped the nation meet its commitments under the Montreal Protocol and the federal Clean Air Act. We could not have achieved these results without the collaboration of our partners, including McWane Science Center. Partnerships such as these have spurred progress in technology development and deployment to protect the ozone layer, save energy, and prevent emissions of greenhouse gases.

For example, we have worked closely with pioneers in many fields to phase out high priority "first-generation" ozone depleting substances, such as chlorofluorocarbons (CFCs), on a faster schedule – and at less cost – than originally anticipated. We have also ensured that new products and technologies are brought to the marketplace to assure a smooth transition away from ozone depleting substances.

In addition, we have led a campaign to raise awareness about the effects of ozone depletion on public health. Our programs and tools assist Americans, particularly vulnerable school children, to reduce their lifetime risk of skin cancer from overexposure to the sun. Efforts to protect the ozone layer will save trillions of dollars in societal health benefits over the next several decades.

If you would like to receive a copy of the report, or a briefing on the benefits arising from our work to protect the ozone layer, including reductions of greenhouse gases, please contact me or your staff may contact Ronna Landy in the Environmental Protection Agency's Office of Congressional and Intergovernmental Relations at (202) 564-3109. The report is also available at <http://www.epa.gov/ozone>.

Sincerely,

A handwritten signature in black ink, appearing to read 'W L Wehrum', with a long, sweeping horizontal line extending to the right.

William L. Wehrum
Acting Assistant Administrator

07-000-8587

United States Senate
WASHINGTON, DC 20510-0104

May 16, 2007

Mr. Stephen L. Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

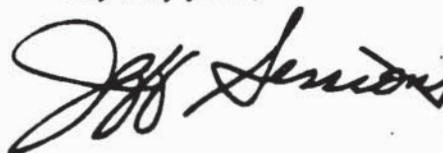
Dear Mr. Johnson:

I am writing to express my support for the grant application submitted by the Alabama Clean Water Partnership (ACWP) to the US Environmental Protection Agency for the Five Star Restoration Grant Program.

This funding, if awarded, would support Phase II of an ACWP initiative to identify the causes of excessive river bank erosion along 187 river miles of the Lower Tombigbee. This erosion is leading to property loss, habitat degradation, and sedimentation in and along the river bank, and it is critical that the ACWP develop and implement a long range plan in order to decrease further erosion and restore and protect riverine habitat. Additionally, the ACWP would educate and empower local citizens on stabilizing the riverbanks and identify economic development opportunities.

After reviewing the proposal submitted by the ACWP, I am sure you will agree that this project has merit and is worthy of funding. Therefore, I urge your utmost consideration and look forward to a favorable response. If you have any questions or need additional information, please do not hesitate to contact Michelle Tims, Grants and Projects Director, in my Birmingham office at 205-731-1500.

Very truly yours,



Jeff Sessions
United States Senator

JS:mjt



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 7 2007

OFFICE OF
WATER

The Honorable Jeff Sessions
United States Senate
Washington DC 20510

Dear Senator Sessions:

Thank you for your letter of May 16, 2007, to Administrator Stephen L. Johnson in support of Alabama Clean Water Partnership's (ACWP) Lower Tombigbee River Five Star Restoration Grant proposal. The Environmental Protection Agency (EPA) appreciates your strong commitment to the goals of the Clean Water Act and welcomes your input on the need for action to identify the causes of excessive river bank erosion along the Lower Tombigbee River that is leading to property loss, and habitat degradation along 187 miles of the river.

The Five Star Grants are awarded through a free and open competition process. All of the proposals (184 for the 2007 competition) will be reviewed by a grants review panel and scored based upon the following factors: education/training benefits; ecological and socioeconomic benefits; the number, diversity, and strength of the partnerships involved in the project; quality of on-the-ground restoration; long-term stewardship of the project; how the project fits into a larger watershed planning framework; and finally the value of the project as a demonstration for future work by the same group or other groups. The review panel consists of the Five Star Grant Program partners which include the National Fish and Wildlife Foundation (NFWF), the National Association of Counties (NACo), the Wildlife Habitat Council (WHC), Southern Power, and EPA. After the selection process is finalized all of the awards go through a 30-day period of Congressional Notification, usually beginning in early June, before announcements of the awardees are made public.

We greatly appreciate the strong support you have for the Lower Tombigbee River Bank Erosion Project. If you have further questions, please contact me or your staff may call Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

*Thank
you*

Sincerely,

A handwritten signature in black ink, reading "B H Grumbles", is written over a horizontal line.

Benjamin H. Grumbles
Assistant Administrator

11-000-9031

United States Senate

WASHINGTON, DC 20510

May 27, 2011

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Administrator Jackson:

For nearly a decade, repeated efforts were made in both the House and Senate to pass legislation (commonly called the "Clean Water Restoration Act") to fundamentally alter the Clean Water Act (CWA) by expanding Federal government jurisdiction over water and land features whose regulation is subject to state oversight. These bills, introduced in the 111th Congress by former Senator Russ Feingold (D-WI) and former Congressman James Oberstar (D-MN), were never even scheduled for floor consideration in either Chamber. The House version of the bill never even came to a vote in committee. The reasons for this are simple. The measure was highly controversial and was strongly opposed by a broad cross-section of economic interests, including farmers, ranchers and small business people back in our home states and across the country.

In this context, we reviewed the Clean Water Act jurisdictional guidance document released by your agency on April 27th and concluded, just as your agency has, that the guidance will significantly expand federal control of private lands. In the process, it will almost certainly erect barriers to economic activity and job creation, and it will greatly expand the possibility of litigation against private landowners.

Despite revisions to some of the rhetoric in the document, the effect of the guidance will be to expand federal control into areas currently reserved to state authority. Some experts have characterized this guidance as circumventing Congress by effectively implementing the goals of the Clean Water Restoration Act, despite the fact that Congress has never authorized such an expansion of jurisdiction. Just as troubling as ignoring Congressional intent, the guidance appears to disregard the fundamental tenet embodied in two decisions of the United States Supreme Court (*SWANCC* and *Rapanos*) – that there are limits to federal jurisdiction.

It is particularly troubling that the guidance allows the U.S. Army Corps of Engineers and EPA to regulate waters now considered entirely under state jurisdiction. This unprecedented exercise of power will allow EPA to trump states' rights, and vitiate the authority of state and local governments to make local land and water use decisions. This is particularly troubling when we have seen no evidence that the states are misusing or otherwise failing to meet their responsibilities.

Page Two

Enormous resources will be needed to expand the CWA federal regulatory program. Not only will there be a host of landowners and project proponents who will now be subject to the CWA's mandates and costs of obtaining permits, but an increase in the number of permits needed will lead to longer permitting delays. Increased delays in securing permits will impede a host of economic activities in our states. Commercial and residential real estate development, agriculture, electric transmission, transportation, energy development and mining will all be effected and thousands of jobs will be lost. Moreover, the agencies will need additional resources to complete jurisdictional determinations and administer the overall program. As the geographic scope of authority grows, so do the needs for program resources.

With that in mind, we request clarification on the draft guidance and request a response to the following questions no later than June 15th:

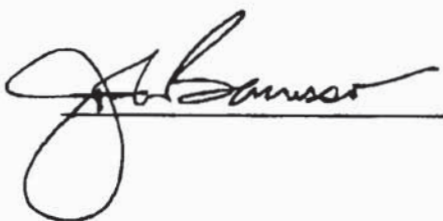
- 1) The draft guidance appears to present a broad interpretation of Supreme Court Justice Anthony Kennedy's "significant nexus" test for determining federal regulatory jurisdiction over wetlands by expanding this test to give EPA and the Corps jurisdiction over any type of water body that has a connection to a navigable water body. Is this an accurate description? If not, please explain why not.
- 2) The guidance states that "A hydrologic connection is not necessary to establish a significant nexus, because in some cases the lack of a hydrologic connection would be a sign of the water's function in relationship to the traditional navigable water or interstate water, such as retention of flood waters or pollutants that would otherwise flow downstream to the traditional navigable water or interstate water." Please explain in more detail how there can be a significant nexus with a navigable water body without there being a hydrological connection to that water body?
- 3) What wet areas of a State do not have a hydrological connection to larger, navigable water bodies under federal jurisdiction? Please be specific to the classification of water body that would not have a hydrological connection to navigable waters that are covered by the Clean Water Act?
- 4) The draft guidance allows the agencies to "aggregate" the contributions of "similarly situated" waters within an entire watershed when making a significant nexus determination, thereby making it far easier to determine that a waterbody has a significant nexus to a traditional navigable water or interstate water. Because the agencies have historically looked solely at the waterbody in question when making jurisdictional decisions, haven't they now effectively expanded their scope of review to include the overall watershed which may or may not reflect the actual functions of the singular water on the traditional navigable water? Please explain how the aggregation is expected to work and how this does not overstep your CWA authority.

Page Three

- 5) In the summary of key points contained within the draft guidance it states "the following aquatic areas are 'generally not protected' by the CWA." Please explain the term "generally" in terms landowners can understand and describe when the features listed in this list are waters of the U.S.?
- 6) Your agency states in the proposed guidance that "Although guidance does not have the force of law, it is frequently used by Federal agencies to explain and clarify their understandings of existing requirements." In addition, the draft guidance states "Each jurisdictional determination, however, will be made on a case-by-case basis considering the facts and circumstances of the case and consistent with applicable statutes, regulations, and case law." Although your agency states this guidance will not have the force of law, it appears it will have an impact on agency decisions that are made on the ground, such as permitting decisions. Is that correct? Please explain in more detail how this guidance will have an impact on decision making on the ground? Likewise, please elaborate and describe a scenario under which an applicant would not have to rely on the guidance, yet be free of legal consequences.
- 7) Applying for a Clean Water Act permit can cost thousands of dollars for an applicant. First, if a landowner disagrees with a jurisdictional determination under this new guidance, can a landowner challenge that determination? Second, if a permit is denied to a farmer, rancher, small business owner or other entity, in whole or in part as a result of this guidance, will the applicant be able to challenge the agency's decision? If so, please describe the process for an appeal. Can the mere assertion of jurisdiction be challenged or would the applicant be required to go through the entire permitting process before a challenge to the scope of jurisdiction to be raised?
- 8) The draft guidance states, "However, it is not the agencies' intention that previously issued jurisdictional determinations be re-opened as a result of this guidance." Despite agency intention, could previous jurisdictional determinations be challenged in court as a result of this guidance? Will agency officials in the field be prevented from retroactively modifying previous jurisdictional determinations under this draft guidance? Please provide the section of the guidance, or other agency document, that clarifies this point.

Congress and the American people have made their voices heard on this issue in the last election. We urge you to reject this economically devastating course of action.

Sincerely,



Page Four

Chuck GrassleyWm L. HatchLee HaskinsJohn McCainJeff SessionsJon KylSayby ChawkinMike JohnsonDail VitterJohn D. ShreveJohn BoozmanRay BennettJerry MoranMike EnziDan CoatsLincoln

Page Five

Lyndus

Michael

FAX

TO:	The Honorable Lisa Jackson	FROM:	Senator John Barrasso
FAX:	202.501.1450	FAX:	202.224.1724
PHONE:	202.564.4700	PHONE:	202.224.6441
SUBJECT:	Clean Water Restoration Act	DATE:	May 27, 2011

John Barrasso (R-WY)

Mike Crapo (R-ID)

Chuck Grassley (R-IA)

Orrin G. Hatch (R-UT)

Lisa Murkowski (R-AK)

John McCain (R-AZ)

Jeff Sessions (R-AL)

James E. Risch (R-ID)

Saxby Chambliss (R-GA)

Mike Johanns (R-NE)

David Vitter (R-LA)

John Thune (R-SD)

John Boozman (R-AR)

Roy Blunt (R-MO)

Jerry Moran (R-KS)

Mike Enzi (R-WY)

Dan Coats (R-IN)

Lindsey Graham (R-SC)

Roger F. Wicker (R-MS)

Michael S. Lee (R-UT)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 11 2011

OFFICE OF
WATER

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your letter of May 27, 2011, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson expressing concern regarding the draft Clean Water Act jurisdictional guidance document released on April 27, 2011, for public comment by EPA and the U.S. Army Corps of Engineers. I appreciate the opportunity to better understand your concerns about the potential effect of the guidance on the nation's economic growth, job creation, and private landowners. As the senior policy manager of EPA's national water program, the Administrator has asked me to respond to your letter.

On April 27, 2011, the EPA and the U.S. Army Corps of Engineers announced the release of draft guidance for determining whether a waterway, water body, or wetland is protected by the Clean Water Act. This draft guidance would replace previous guidance to reaffirm and clarify protection for the nation's waters. The public comment period for the draft guidance was recently extended to July 31, 2011, to allow all stakeholders to provide input and feedback before it is issued. The draft guidance is currently not in use by the agencies.

The draft guidance would reaffirm protections for small streams that feed into larger streams, rivers, bays and coastal waters, affecting the integrity of those waters consistent with the statute and the relevant decisions of the Supreme Court. It similarly would reaffirm protection for wetlands that filter pollution and help protect communities from flooding. This draft guidance does not change any of the existing regulatory exemptions from jurisdiction under the Clean Water Act. All of the Act's exemptions from permitting requirements for normal agriculture, forestry and ranching practices would also continue to apply. Most importantly, the proposed guidance would not assert Clean Water Act protection for any waters not previously covered by the Act. It would merely seek to clarify that some waters previously protected under the Act continue to be protected under the law.

Your letter requested clarification on the draft guidance with regards to eight specific questions for which we have provided answers in an enclosure. I hope my letter and enclosed detailed responses effectively address the questions in your letter.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read 'NKS', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

Enclosure

ENCLOSURE: Responses to Specific Questions

- 1) **The draft guidance appears to present a broad interpretation of Supreme Court Justice Anthony Kennedy's "significant nexus" test for determining federal regulatory jurisdiction over wetlands by expanding this test to give EPA and the Corps jurisdiction over any type of water body that has a connection to a navigable water body. Is this an accurate description? If not, please explain why not.**

In *Rapanos*, Justice Kennedy stated: "In *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), the Court held, under the circumstances presented there, that to constitute 'navigable waters' under the Act, a water or wetland must possess a 'significant nexus' to waters that are or were navigable in fact or that could reasonably be so made." Justice Kennedy went on to hold that adjacent wetlands have the requisite significant nexus "if the wetlands, either alone or in combination with similarly situated [wetlands] in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" (547 U.S. at 780). In light of Justice Kennedy's opinion, the draft guidance does not propose that EPA and the Corps have jurisdiction over any water solely on the basis of a "connection" to a navigable water body; rather, a water must have a "significant nexus" consistent with Justice Kennedy's standard.

- 2) **The guidance states that "A hydrologic connection is not necessary to establish a significant nexus, because in some cases the lack of a hydrologic connection would be a sign of the water's function in relationship to the traditional navigable water or interstate water, such as retention of flood waters or pollutants that would otherwise flow downstream to the traditional navigable water or interstate water." Please explain in more detail how there can be a significant nexus with a navigable water body without there being a hydrological connection to that water body?**

In *Rapanos*, Justice Kennedy concluded that "Given the role wetlands play in pollutant filtering, flood control, and runoff storage, it may well be the absence of a hydrologic connection (in the sense of interchange of waters) that shows the wetlands' significance for the aquatic system" (547 U.S. at 786). Thus, the agencies' guidance reiterates Justice Kennedy's conclusion.

- 3) **What wet areas of a State do not have a hydrological connection to larger, navigable water bodies under federal jurisdiction? Please be specific to the classification of water body that would not have a hydrological connection to navigable waters that are covered by the Clean Water Act?**

The agencies recognize that Supreme Court decisions in *SWANCC* and *Rapanos* have identified limitations on the scope of waters that may be determined to be jurisdictional under the CWA. Since *SWANCC*, the agencies have not asserted jurisdiction over so-called isolated waters—waters without a direct hydrological connection to downstream jurisdictional waters—identified under section (a)(3) of the current regulatory definition of waters of the US. The agencies expect to further clarify the scope of waters subject to CWA jurisdiction, including jurisdiction over (a)(3) waters after *SWANCC* and *Rapanos*, as part of a notice and comment rulemaking. At this time, we are not providing specific guidance on making such determinations and are instead directing agency field staff to continue the current practice of referring

determinations for non-physically proximate other waters to their respective Headquarters and obtaining formal project-specific approval before asserting or denying jurisdiction.

Prairie potholes, playas, fens, and intrastate non-navigable lakes are examples of types of waters that would typically receive a case-specific significant nexus analysis under the draft guidance.

- 4) **The draft guidance allows the agencies to “aggregate” the contributions of “similarly situated” waters within an entire watershed when making a significant nexus determination, thereby making it far easier to determine that a waterbody has a significant nexus to a traditional navigable water or interstate water. Because the agencies have historically looked solely at the waterbody in question when making jurisdictional decisions, haven't they now effectively expanded their scope of review to include the overall watershed which may or may not reflect the actual functions of the singular water on the traditional navigable water? Please explain how the aggregation is expected to work and how this does not overstep your CWA authority.**

In *Rapanos*, Justice Kennedy provides an approach for determining what constitutes a “significant nexus” that can serve as a basis for statutory jurisdiction. He provided further guidance for determining whether wetlands should be considered to possess the requisite nexus in the context of assessing whether wetlands are jurisdictional: “if the wetlands, either alone or in combination with similarly situated [wetlands] in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” (547 U.S. at 780).

As a result, the consideration of “similarly situated [wetlands] in the region” has been a part of jurisdictional determinations since *Rapanos*. Using a watershed as the framework for conducting significant nexus evaluations is scientifically supportable. Watersheds are generally regarded as the most appropriate spatial unit for water resource management. Anthropogenic actions and natural events can have widespread effects within the watershed that collectively impact the quality of the relevant traditional navigable water or interstate water. The watershed that contributes flow to the point of entry to a traditional navigable or interstate water is a logical spatial framework for the evaluation of the nexus. The functions of the contributing waters are inextricably linked and have a cumulative effect on the integrity of the traditional navigable water or interstate water.

- 5) **In the summary of key points contained within the draft guidance it states "the following aquatic areas are 'generally not protected' by the CWA." Please explain the term "generally" in terms landowners can understand and describe when the features listed in this list are waters of the U.S.?**

The draft guidance includes a detailed list of long-standing examples of waters generally not covered by the Act. Because guidance cannot create binding norms, the draft guidance provides this list to indicate the agencies' longstanding practice.

- 6) **Your agency states in the proposed guidance that “Although guidance does not have the force of law, it is frequently used by Federal agencies to explain and clarify their understandings of existing requirements.” In addition, the draft guidance states “Each jurisdictional determination, however, will be made on a case-by-case basis considering the facts and circumstances of the case and consistent with applicable statutes, regulations, and case law.”**

Although your agency states this guidance will not have the force of law, it appears it will have an impact on agency decisions that are made on the ground, such as permitting decisions. Is that correct? Please explain in more detail how this guidance will have an impact on decision making on the ground? Likewise, please elaborate and describe a scenario under which an applicant would not have to rely on the guidance, yet be free of legal consequences.

Neither this draft guidance, nor any planned rulemaking, can expand Federal authority beyond what the Supreme Court has concluded is authorized by the Clean Water Act. The draft guidance interprets the existing agency regulations in a manner consistent with Supreme Court decisions. The guidance does not have the force of law. Guidance is frequently used by Federal agencies to explain and clarify their understandings of existing requirements. Each jurisdictional determination, however, will be made on a case-by-case basis considering the facts and circumstances of the case and consistent with applicable statutes, regulations, and case law.

The guidance will clarify headquarters' understanding for field staff, of existing requirements under regulation and case law. Applicants do not themselves follow the guidance; rather, it is a tool to guide Army Corps and EPA field staff actions. The agencies expect the scope of jurisdiction may increase slightly compared to the extent of waters over which jurisdiction has been asserted under existing guidance, though certainly not to the full extent that it was typically asserted prior to the Supreme Court decisions in *SWANCC* and *Rapanos*. However, as you note, each jurisdictional determination will be made on a case-by-case basis considering the facts and circumstances of the case and consistent with applicable statutes, regulations, and case law.

- 7) Applying for a Clean Water Act permit can cost thousands of dollars for an applicant. First, if a landowner disagrees with a jurisdictional determination under this new guidance, can a landowner challenge that determination? Second, if a permit is denied to a farmer, rancher, small business owner or other entity, in whole or in part as a result of this guidance, will the applicant be able to challenge the agency's decision? If so, please describe the process for an appeal. Can the mere assertion of jurisdiction be challenged or would the applicant be required to go through the entire permitting process before a challenge to the scope of jurisdiction to be raised?**

A jurisdictional decision may be appealed in the context of an appeal in a Corp permit decision. A permit decision is appealable, and may encompass a challenge to the extent of Clean Water Act-jurisdictional waters on site. The guidance does not change the U.S. Army Corps' permit appeal process as established under 33 CFR Part 331.

The agencies believe the additional clarity provided by the draft guidance will help project proponents to more readily assess whether Clean Water Act permits are needed. Implementation of Clean Water Act programs will also be more consistent and transparent nationwide. Consistency often is a concern for developers who operate in many Corps districts and EPA regions around the country.

In addition, the Army Corps of Engineers will continue to offer applicants the use of preliminary jurisdictional determinations, which allows project proponents to proceed with the section 404 permitting process more efficiently.

- 8) The draft guidance states, "However, it is not the agencies' intention that previously issued jurisdictional determinations be re-opened as a result of this guidance." Despite agency intention, could previous jurisdictional determinations be challenged in court as a result of this guidance? Will agency officials in the field be prevented from retroactively modifying previous jurisdictional determinations under this draft guidance? Please provide the section of the guidance, or other agency document, that clarifies this point.

As stated, it is not the agencies' intent to re-open previously issued jurisdictional determinations as a result of this guidance. Final jurisdictional determinations issued by the Corps have a time duration for their validity – typically 5 years, unless new information is provided. As long as an applicant's project is permitted during the time the jurisdictional determination is valid, the extent of jurisdictional waters will not be reassessed by the Agencies.

11-001-9986

SENATORS:

DANIEL K. AKAKA
CHRIS COONS
MICHAEL B. ENZI
KAY BAILEY HUTCHISON
JAMES M. INHOFE
JOHNNY ISAKSON
AMY KLOBUCHAR
BILL NELSON
CHARLES E. SCHUMER
ROGER F. WICKER



**Jeff Sessions
Mark Pryor**

United States Senators

NATIONAL PRAYER BREAKFAST CO-CHAIRS

REPRESENTATIVES:

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PHIL GINGREY
AL GREEN
GREGG HARPER
MIKE MCINTYRE
JEFF MILLER
HEATH SHULER

November 15, 2011

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004-2403

Dear Mr. and Mrs. Jackson:

On behalf of the Congressional Committee, we have the pleasure of inviting you to join us for the 60th National Prayer Breakfast, which will be held on Thursday, February 2, 2012, at 7:30 a.m. at the Washington Hilton in Washington, D.C.

Annually, Members of Congress, the President of the United States, and other national leaders gather to reaffirm our trust in God and recognize the reconciling power of prayer. Friends and leaders throughout the United States and from more than 140 countries come in the spirit of friendship to set aside differences and seek to build and strengthen relationships through our love for God and care for one another. Although we face tremendous challenges each day, our hearts can be strengthened both individually and collectively as we seek God's wisdom and guidance together.

Your prompt response is essential and greatly appreciated. We hope you will be able to join us for this special occasion.

Sincerely,


Jeff Sessions


Mark Pryor

NPB 5

12-000-3735

KENT CONRAD, NORTH DAKOTA, CHAIRMAN
PATY MURRAY, WASHINGTON
RON WYDEN, OREGON
BILL NELSON, FLORIDA
DEBBIE STABENOW, MICHIGAN
BENJAMIN L. CARDIN, MARYLAND
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JOHN CORNYN, TEXAS
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JOHN THUNE, SOUTH DAKOTA
ROB PORTMAN, OHIO
PAT TOOMEY, PENNSYLVANIA
RON JOHNSON, WISCONSIN
KELLY AYOTTE, NEW HAMPSHIRE

United States Senate

COMMITTEE ON THE BUDGET

WASHINGTON, DC 20510-6100

MARY ANN NAYLOR, MAJORITY STAFF DIRECTOR
MARCUS PEACOCK, MINORITY STAFF DIRECTOR
www.budget.senate.gov

February 8, 2012

The Honorable Lisa P. Jackson
Administrator
US Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20004

Dear Administrator Jackson:

In April of last year, I requested that you submit five years of unobligated balance data (funds to expire at the end of the fiscal year), excluding funds provided by the American Recovery and Reinvestment Act of 2009.¹ Now that we have reached the conclusion of the 2011 fiscal year, I request that you submit the identical data for FY 2011, making sure to include the percentage of funds expiring, plus an additional element, the expiring end of the year budget authority for each month.²

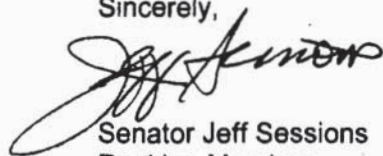
The following table may assist you in providing this information:

Amount (\$millions), % of funds expiring at the end of the fiscal year that remained unobligated at the end of each month, and the budget authority for each month.

FY	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2011												
%												
BA												

Please provide this information in hard copy and an Excel compatible electronic file (via email: william_smith@budget.senate.gov) by February 24, 2012 to William Smith on the Senate Committee on the Budget. Questions can be directed to Mr. Smith at (202) 224.6308.

Sincerely,



Senator Jeff Sessions
Ranking Member
Senate Budget Committee

¹ See attached.

² If you failed to include any of the responsive data in the previous request, please supplement your response in this request.

PATTY MURRAY, WASHINGTON
RON WYOEN, OREGON
BILL NELSON, FLORIDA
DEBBIE STABENOW, MICHIGAN
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
MARK R. WARNER, VIRGINIA
JEFF MERKLEY, OREGON
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JEFF SESSIONS, ALABAMA
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LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN THUNE, SOUTH DAKOTA
ROB PORTMAN, OHIO
PAT TOOMEY, PENNSYLVANIA
RON JOHNSON, WISCONSIN
KELLY AYOTTE, NEW HAMPSHIRE

MARY ANN NAYLOR, MAJORITY STAFF DIRECTOR
MARCUS PEACOCK, MINORITY STAFF DIRECTOR
www.budget.senate.gov

[illegible]

Please provide this information in hard copy and an Excel compatible electronic file by July 20, 2011 to William Smith on the Senate Committee on the Budget. Questions can be directed to Mr. Smith at (202) 224-6308.

Sincerely,

Senator Jeff Sessions
Ranking Member
Senate Budget Committee



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 2012

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your follow-up letter dated February 8, 2012, to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency, requesting information on the status of the total amount of unobligated balances of non-American Recovery and Reinvestment Act discretionary funds that would have expired at the end of fiscal year 2011 within EPA. The enclosure provides a report on the EPA's data for FY 2011. The report shows dollars and percentage unobligated for each month for expiring funds.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Bennett", with a long horizontal flourish extending to the right.

Barbara J. Bennett
Chief Financial Officer

Enclosure

EPA Expiring Unobligated Balances 2006 - 2010

FY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL THAT WOULD HAVE LAPSED EOY
2006 Dollars	\$407	\$370	\$340	\$303	\$276	\$240	\$217	\$180	\$145	\$116	\$57	\$2.0	\$2.0
2006 Percentage	91%	82%	76%	67%	61%	53%	48%	40%	32%	26%	13%	0.45%	0.45%
2007 Dollars	\$381	\$338	\$304	\$270	\$240	\$196	\$158	\$121	\$66	\$49	\$24	\$1.6	\$1.6
2007 Percentage	88%	78%	70%	62%	55%	45%	36%	28%	15%	11%	6%	0.37%	0.37%
2008 Dollars	\$422	\$382	\$326	\$278	\$247	\$184	\$152	\$114	\$75	\$36	\$14	\$1.8	\$1.8
2008 Percentage	87%	79%	67%	57%	51%	38%	31%	23%	15%	7%	3%	0.39%	0.39%
2009 Dollars	\$365	\$323	\$273	\$244	\$201	\$167	\$124	\$77	\$50	\$20	\$10	\$1.8	\$1.8
2009 Percentage	82%	73%	62%	55%	45%	38%	28%	17%	11%	4%	2%	0.40%	0.40%
2010 Dollars	\$359	\$316	\$268	\$239	\$216	\$181	\$150	\$113	\$73	\$43	\$7	\$1.8	\$1.8
2010 Percentage	84%	74%	63%	56%	51%	42%	35%	27%	17%	10%	2%	0.44%	0.44%

* This data includes Environmental and Programs Management, Science and Technology, and Inspector General Appropriations.

*The data above is for reference purposes only. It was previously provided in response to Senator Sessions's April 14, 2011 request.

EPA Expiring Unobligated Balances 2011

(In Millions)

FY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL THAT WOULD HAVE LAPSED EOY
2011 Dollars	\$420	\$354	\$284	\$218	\$148	\$105	\$77	\$56	\$44	\$32	\$16	\$2.6	\$2.6
2011 Percentage	88%	75%	60%	46%	31%	22%	16%	12%	9%	7%	3%	0.55%	0.55%

* This data includes Environmental and Programs Management, Science and Technology, and Inspector General Appropriations.

12-000-9172

CLARENCE M. BROWN, JR.
DANIEL PATRICK MOYNIHAN
FRANK R. LUTER, JR.
JAMES H. EASTLAND
JAMES EARL RAY
JOHN STENNIS
JONAS MEYER
LARRY D. BROWDER
MICHAEL B. ROSEN
ROBERT C. BYRD
ROBERT D. BENTON
TOM COOPER
WILLIAM V. Roth

ALBERT J. ARNO
ALBERT J. ARNO
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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

U.S. SENATOR, MISSOURI STATE DIRECTOR
U.S. SENATOR, MISSOURI STATE DIRECTOR

May 24, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are deeply concerned by remarks made recently by a senior Environmental Protection Agency (EPA) official regarding enforcement practices in light of the Supreme Court's recent ruling in *Sackett v. EPA* ("*Sackett*"). In its May 7, 2012, edition, *Inside EPA* reported:

A top EPA official is downplaying the impact of the unanimous High Court ruling that opens up Clean Water Act (CWA) compliance orders to pre-enforcement judicial review, saying it will have little effect on how the agency enforces the water law, while floating several options it is considering for new documents that may be exempt from review. "What's available after *Sackett*? Pretty much everything that was available before *Sackett*," Mark Pollins, director of EPA's water enforcement division, said. [. . .] "Internally, it's same old, same old."

Additionally, a BNA article from May 4, 2012, "EPA Official Sees No Major Shift In Agency's Use of Compliance Orders," also recounted Mr. Pollins' remarks downplaying the Supreme Court's decision in *Sackett*. It is very troubling that an EPA official with water enforcement responsibilities would believe that the Supreme Court's decision in *Sackett* has little effect on how the agency enforces the Clean Water Act.

As you know, in *Sackett v. EPA*, the Supreme Court held that EPA compliance orders are subject to pre-enforcement review by the federal courts. Compliance orders often declare that the recipient is in violation of law and threaten thousands, or even millions, of dollars in fines for the initial violations followed by thousands or millions of dollars in additional fines for not complying with the "compliance order" itself. Thus, EPA's refusal to agree to such review in the first place left the *Sackett* family, as it has done to many other Americans, in a state of legal limbo—at risk of substantial civil or criminal penalties if they proceeded with development of their private property but without the ability to seek a court order to determine whether EPA was acting in accordance with the Clean Water Act.

Indeed, the *Sacketts* faced a terrible choice: Give into EPA's overreaching involvement by foregoing the reasonable use of their private property, or force EPA's hand by proceeding with

The Honorable Lisa Jackson
Page 2
May 24, 2012

development of their property at the risk of bankruptcy or imprisonment. EPA afforded them no opportunity to seek a neutral arbiter's evaluation of EPA's assertion of jurisdiction. No American should be faced with that choice. In fact, the Supreme Court's 9-0 ruling strongly demonstrates the absurdity of EPA's position in this case. Regrettably, we do not believe this is an isolated case with "little effect" on EPA's practices. To the contrary, as the *Wall Street Journal* explained in a March 22, 2012 editorial, "The ordeal of the Sacketts shows once again how [EPA] with a \$10 billion budget and 17,000 agents has become a regulatory tyranny for millions of law-abiding Americans." The Congressional Research Service recently found that EPA issues over 1,000 administrative compliance orders annually, which provides ample reason to question how *Sackett* will impact the agency's approach to CWA enforcement.¹

The Court's decision points toward a broader concern: EPA should not use its enforcement authority to intimidate citizens into compliance. As Justice Scalia noted in the majority opinion, "There is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into voluntary compliance without judicial review." Nevertheless, as evidenced by these comments made by Mr. Pollins, it seems that EPA plans to continue business as usual and sees no need to change their use of compliance orders in response to the Court's holding. In order to help us understand the steps the EPA is taking following the *Sackett* decision, we request you clarify the comments made by Mr. Pollins and explain how the agency's enforcement office plans to proceed in pursuing CWA enforcement in light of *Sackett*.

Thank you for your prompt attention to this matter.

Sincerely,



The block contains six handwritten signatures, each on a horizontal line. From top left to bottom right, the signatures are: Jill G., Lisa Neuharber, Mitch McConnell, Jeff Sessions, Mike Crapo, and Jim Risch.

¹ CRS Report, *The Supreme Court Allows Pre-enforcement Review of Clean Water Act Section 404 Compliance Orders: Sackett v. EPA* (March 26, 2012).

May 24, 2012

Don Vitter

Lamar Alexander

John Boozman

Vern Heller

John Hoeven

John Barrasso

Mike Johanns

Markwayne Mullins

Rand Paul

Mike Crapo



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 10 2012

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Inhofe:

Thank you for your May 24, 2012 letter to Administrator Lisa Jackson regarding the United States Environmental Protection Agency's (the EPA) plans to enforce Clean Water Act (CWA) requirements in light of the Supreme Court's decision in *Sackett v. EPA* which held that CWA section 309(a) administrative compliance orders are now subject to pre-enforcement review by the federal courts. I appreciate the opportunity to discuss the EPA's enforcement program.


The EPA will, of course, fully comply with the Supreme Court's decision as we work to protect clean water for our families and future generations by using the tools provided by Congress to enforce the CWA. The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all five federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review. We are taking all necessary steps to ensure that compliance orders issued by the agency comply with the Court's mandate. The EPA has directed all enforcement staff to ensure that the regulated community is fully aware of the right to challenge a Section 309(a) administrative compliance order and to include language explicitly informing respondents of this right with any unilateral Section 309(a) administrative compliance order issued by the agency. Attached is a memorandum from Pamela J. Mazakas, Acting Director of the Office of Civil Enforcement, to the regions highlighting the importance of the *Sackett* decision and informing them of the consequent changes to the CWA enforcement program.

In your letter, you express concern about remarks made by an EPA enforcement official at the *ALI ABA Wetlands Law and Regulation Seminar* on May 3, 2012, as reported by the publications *Inside EPA* and *BNA*. Both articles focused solely on a single statement by the EPA official and implied that the *Sackett* decision has not changed the EPA's approach to enforcement of the CWA. However, this single statement taken out of context does not accurately represent the overall message from this presentation or the agency's position that the *Sackett* decision does significantly change the law concerning reviewability of CWA administrative compliance orders. The focus of the presentation and discussion at the May 3, 2012 seminar was that compliance orders issued under 309(a) of the CWA will now be subject to judicial review and that the agency will ensure that its compliance orders are supported by an administrative record that describes the factual and legal basis for the order. It was clear from the entire presentation by the EPA speaker that EPA has and will continue to exercise sound principles of evidence gathering and legal analysis to support its administrative compliance orders, and that the EPA expects that judicial review would reaffirm the factual and legal support for orders issued by the agency. The

EPA has consistently stated since the *Sackett* decision that recipients of CWA section 309(a) compliance orders must be afforded an opportunity to challenge them in court. The agency is confident in the integrity of its administrative enforcement process and, as always, will issue compliance orders only when they are well supported by the facts and the law.

Again, thank you for your letter. If you have any questions, please contact me or have your staff contact Carolyn Levine, Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,



Cynthia Giles

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Clean Water Act Section 309(a) Administrative Compliance Order
Authority after *Sackett v. EPA*

FROM: Pamela J. Mazakas, Acting Director
Office of Civil Enforcement

TO: Addressees

As you know, on March 21, 2012, the Supreme Court ruled unanimously in *Sackett v. EPA*, 132 S. Ct. 1367, that administrative compliance orders issued under Section 309(a) of the Clean Water Act (CWA) are subject to pre-enforcement judicial challenge under the Administrative Procedure Act (APA). The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all of the federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review.¹ The purpose of this memorandum is to provide guidance on the use of Section 309(a) administrative compliance order authority in response to the *Sackett* decision.

As a result of the Supreme Court's holding, recipients of Section 309(a) administrative compliance orders are now afforded an opportunity to challenge those orders under the APA, before EPA brings an action to enforce the order, a right not previously available to them in the courts. It is therefore incumbent on EPA enforcement staff to ensure that the regulated community, and in particular all recipients of Section 309(a) administrative compliance orders, are fully aware of this new right. Language clearly informing respondents of this right should be included with any unilateral Section 309(a) administrative compliance order issued by the Agency.

¹ *Southern Pines Assocs. v. United States*, 912 F.2d 713 (4th Cir. 1990); *Southern Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement*, 20 F.3d 1418 (6th Cir.), cert. denied, 513 U.S. 927 (1994); *Hoffman Group, Inc. v. EPA*, 902 F.2d 567 (7th Cir. 1990); *Sackett v. EPA*, 622 F.3d 1139 (9th Cir. 2010), rev'd, 132 S. Ct. 1367 (2012); *Laguna Gatuna, Inc., v. Browner*, 58 F.3d 564 (10th Cir. 1995), cert. denied, 516 U.S. 1071 (1996).

The Supreme Court's decision presents the Agency with an opportunity to evaluate how it can make the best use of limited enforcement resources to achieve compliance with environmental laws. While issuance of Section 309(a) administrative compliance orders remains a valuable tool to ensure compliance with the CWA, enforcement staff should continue to evaluate other enforcement approaches to promote compliance where appropriate in given circumstances. Other tools, such as less formal notices of violation or warning letters, can sometimes be helpful in resolving violations.

EPA enforcement staff should continue the practice of inviting parties to meet and discuss how CWA violations (and amelioration of the environmental impacts of such violations) can be resolved as quickly as possible. The goal of the administrative enforcement process is to address violations preferably by a mutually-agreed upon resolution through measures such as an administrative compliance order on consent. Using consensual administrative compliance orders, when possible, can help to reduce EPA and third party costs where regulated entities are willing to work cooperatively to quickly correct CWA violations and abate potential harm to human health and the environment.

Finally, the judicial review of Section 309(a) administrative compliance orders provides the opportunity to be even more transparent in demonstrating the basis for our enforcement orders. The Agency has historically exercised sound principles of evidence gathering and legal analysis to support its administrative compliance orders and is confident that judicial review would reaffirm the Agency's longstanding practice. The *Sackett* decision underscores the need for enforcement staff to continue to ensure that Section 309(a) administrative compliance orders are supported by documentation of the legal and factual foundation for the Agency's position that the party is not in compliance with the CWA. This will aid in the successful defense of any Section 309(a) administrative compliance order in court, should an order be challenged, and allow us to fulfill our statutory responsibility to address violations affecting the nation's waters.

We will continue to work closely with the Regions, Office of General Counsel, and the Department of Justice on any issues identified as we continue to evaluate and respond to the Supreme Court's decision. Thank you in advance for your ongoing cooperation. If you have additional questions, please contact me or Mark Pollins at (202) 564-4001.

Addressees:

OECA Office Directors and Deputies
Regional Counsels, Regions 1 - 10
Regional Enforcement Divisions Directors, Regions 1 - 10
Regional Enforcement Coordinators, Regions 1 - 10
Water Management Division Directors, Regions 1 - 10
Randy Hill, OWM
Steve Neugeboren, OGC
Letitia Grishaw, EDS/DOJ
Steven Samuels, EDS/DOJ
Benjamin Fisherow, EES/DOJ
Karen Dworkin, EES/DOJ

12-000-8479

COMMITTEES:
BUDGET
Ranking Member
JUDICIARY
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS

United States Senate
WASHINGTON, DC 20510-0104

May 7, 2012

Mr. David McIntosh
Acting Director of Congressional Relations
Environmental Protection Agency
Room 3426, North
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

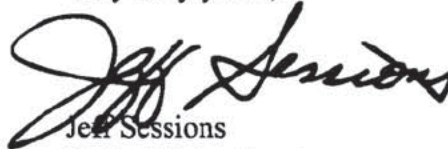
Dear Mr. McIntosh:

I am enclosing a letter that I received from Ms. (b) (6) who is concerned with a foul odor that is permeating her community. Any information you may have regarding this matter would be appreciated. If you would respond directly to my constituent and copy my office with your response it would be greatly appreciated.

Thank you for your assistance. Please respond to Valerie Day in my Mobile Office at the following address:

Office of Senator Jeff Sessions
41 West I-65 Service Road North, Suite 2300-A
Mobile, Alabama 36608-1291
251-414-3083

Very truly yours,


Jeff Sessions
United States Senator

JS: vd

cc: Mr. Lance R. LeFleur, ADEM

(b) (6)

04/05/2012

Senator Jeff Sessions
326 RUSSELL SENATE OFFICE BUILDING
WASHINGTON DC 20510
State: Alabama

Dear Congressman Sessions:

Re: High concentrations of hazardous Butyl-Mercaptan in Eight Mile, AL water supply and air

On June 2006, I hand picked my brand new first home located at (b) (6) in Eight Mile, AL. It has four bedrooms to accommodate my 3 children and me. Our home is located in a cozy cul de sac. During the spring and summer, the birds in the forest behind our home serenade us with singing each morning and though out the day. To better enjoy the amenities of our home, we have built a privacy fence and planted an array of exotic plants and shrubs. Last year spring, I planted 2 highly fragrant sweet olive trees to enjoy this 2012 spring. Unfortunately, due to a recent acute possibly chronic illness that has been researched since early March, I am constantly dizzy (vertigo), often nauseated with frequent nerve impulses. Because I am afraid to the breath in the air and drink the water, I have spent several nights away from my home and now take the longer route home to avoid higher concentration of a foul gaseous odor near my home. I have acquired medical bills and have been unable to return to work. I am convinced my sudden illness is the result of an identified hazardous chemical, butyl mercaptan, that permeates our air and our city water.

I am disappointed because, for months Eight Mile residents have been dealing with an unresolved pungent smell similar to natural gas. Concerned with a possible explosion, in January, I reported the natural gas smell in the air to Mobile Gas. They disconnected my gas and sent a representative to my home whom gave an extremely evasive explanation for the odor. On March 6th, the Alabama Department of Environmental Management identified the odor as a hazardous chemical. ADEM says Mobile Gas has buried lines in the area and their water samples found 460 ppb of butyl mercaptan. The chemical is used in natural gas lines to detect when there is a leak. It causes headaches, dizziness, and nausea. One week after ADEM's involvement, the odor was not detected. After that one week, the odor returned. ADEM stated collected soil samples test results would be released March 13th. As of today, no results have been release. I am even more disappointed that a situation such as this has been permitted to compromise my family's quality of life with out warning nor answers. To resolve the problem, I need your immediate assistance with having the dangerous

chemical removed immediately, a detailed explanation of why the hazardous chemical was allowed in our specific area, and why we were not properly warned. In addition, I would like to be reimbursed for punitive damages. I will fax copies of my records regarding this situation to (202) 224-3149 .

I look forward to your prompt reply and a resolution to my problem. Please contact me at the above addresses or by calling (b) (6) / (b) (6) / (b) (6) .



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN - 4 2012

Ms. (b) (6)
2711 Beverly P. Washington Street
Eight Mile, Alabama 36613

Dear Ms. (b) (6)

Thank you for your April 5, 2012, letter addressed to Senator Jeff Sessions concerning high concentrations of t-butyl mercaptan in Eight Mile, Alabama. Your letter has been referred to my office for a response.

The U.S. Environmental Protection Agency, Region 4, became aware of this issue in mid-March of this year via a telephone call from a citizen of the Eight Mile community. My staff contacted both the Mobile field office and the Montgomery central office of the Alabama Department of Environmental Management (ADEM) to learn more about the situation.

We learned that ADEM had already begun an investigation of the odors. ADEM is taking the lead in addressing the community's concerns and requested that EPA Region 4 provide technical assistance in determining the nature of the odor by conducting air monitoring in the Eight Mile community. On April 9, 2012, several of my staff attended a public meeting at Highpoint Baptist Church in Eight Mile and informed attendees about the plans to monitor the air in Eight Mile for t-butyl mercaptan. During the week of April 23-27, 2012, approximately 35 air samples were collected from 10 different locations in Eight Mile. We are awaiting the results of the analysis of those samples from the laboratory and expect to receive them by June 11, 2012. Once we receive the results, we will share the information with Mr. Scott Brown with ADEM, Mayor Ron Davis of Prichard, Alabama, and the citizens of Eight Mile.

We appreciate the opportunity to work with ADEM and assist the citizens of Eight Mile in investigating their mercaptan concentrations. For further information regarding the t-butyl mercaptan issue in Eight Mile, please contact Mr. J. Scott Brown with ADEM's Mobile office at (251) 432-6533 or by email at jsb@adem.state.al.us. If the EPA may be of further assistance, please contact Mr. Doug Neeley of the Air, Pesticides and Toxics Management Division at (404) 562-9097.

Sincerely,

Gwendolyn Keyes Fleming
Regional Administrator

cc: The Honorable Jeff Sessions
Lance LeFleur, Director, ADEM
J. Scott Brown, ADEM, Mobile Office
Mayor Ron Davis, City of Prichard

United States Senate

WASHINGTON, DC 20510

August 7, 2012

Administrator Lisa P. Jackson
U.S. Environmental Protection Agency
Room 300, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

With record droughts across the continental United States causing corn supplies to shrink and prices to spike, we ask you to use your existing waiver authority to adjust the corn-ethanol mandate for the Renewable Fuels Standard.

As you know, the Renewable Fuels Standard (RFS) -- approved as part of the Energy Independence and Security Act of 2007 (EISA) -- increased the original RFS. It was designed to enable continued utilization of corn-based ethanol as next-generation biofuels developed and assumed an increasingly larger share of the total RFS. While we believe the RFS will stimulate advanced biofuels to commercialization, adjusting the corn grain-ethanol mandate of the RFS can offer some relief from tight corn supplies and high prices.

As part of EISA, the Congress included "safety valves" that enable the agency to adjust the RFS in the event of inadequate supplies or to prevent economic harm to the country, a region, or a state. Recent data from the United States Department of Agriculture (USDA) suggests the EPA should exercise its waiver authority for the conventional, corn grain-ethanol mandate.

Earlier this year, the USDA indicated that 72 percent of the U.S. corn crop was in good or excellent condition. However, because of persistent extreme heat and drought, the USDA recently rated only 23 percent of the crop as good to excellent and 50 percent as poor to very poor. USDA's July World Agricultural Supply and Demand Estimates (WASDE) report projects that 2012/13 U.S. corn yields would be 146 bushels per acre, 20 bushels less than two months ago.

As stressful weather conditions continue to push corn yields lower and prices upward, the economic ramifications for consumers, livestock and poultry producers, food manufacturers, and foodservice providers will become more severe. In fact, USDA recently announced that the drought gripping half the country will help push food prices above-normal food price inflation to 3 percent to 4 percent next year. Therefore, we ask you to adjust the corn grain-ethanol mandate of the RFS to reflect this natural disaster and these new market conditions. Doing so will help to ease supply concerns and provide relief from high corn prices.

Sincerely,

Kay R. Hagan
Kay R. Hagan

Saxby Chambliss
Saxby Chambliss

Mark Pryor
Mark Pryor

John Boozman
John Boozman

Ben Cardin
Ben Cardin

Johnny Isakson
Johnny Isakson

Chris Coons
Chris Coons

Kay Bailey Hutchison
Kay Bailey Hutchison

Dianne Feinstein
Dianne Feinstein

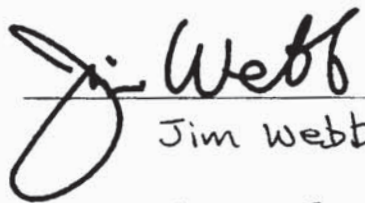
Jeff Sessions
Jeff Sessions


Tom Carper
Tom Carper


[Signature]

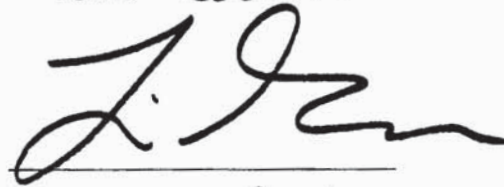
Barbara Mikulski
Barbara Mikulski


Lisa Murkowski
Lisa Murkowski

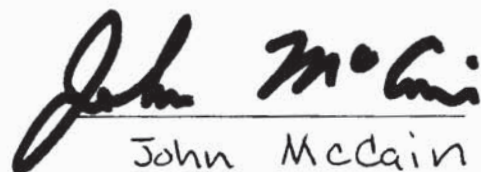

Jim Webb


Tom Coburn

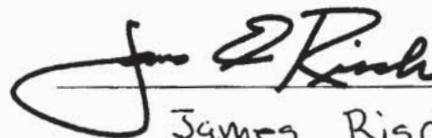

Mike Crapo

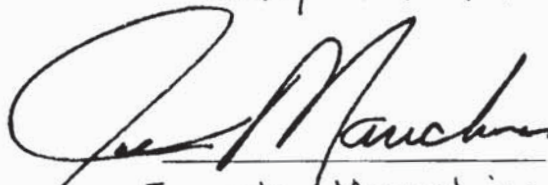

Lindsey Graham


Mark Warner

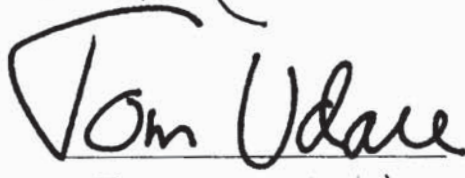

John McCain


Mary Landrieu


James Risch


Joseph Manchin


Jeanne Shaheen


Tom Udall

cc: Secretary Tom Vilsack, U.S. Department of Agriculture
Secretary Steven Chu, U.S. Department of Energy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 31 2013

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter dated August 7, 2012, co-signed by 24 of your colleagues, regarding a waiver of volume requirements under the Renewable Fuels Standard (RFS) program. The Administrator asked me to respond on her behalf.

Governors from several states and a number of organizations cited the drought conditions affecting much of the country in their request for a waiver of the national volume requirements for the RFS pursuant to the Clean Air Act. After extensive analysis, review of thousands of comments, and consultation with the Department of Agriculture (USDA) and the Department of Energy (DOE), the EPA denied the requests for a waiver in a decision published in the *Federal Register* on November 27, 2012.

The EPA recognizes that last year's drought has created significant hardships in many sectors of the economy, particularly for livestock producers. However, the agency's extensive analysis makes clear that Congressional requirements for a waiver have not been met and that waiving the RFS would have little, if any, impact on ethanol demand or energy prices over the time period analyzed.

The *Federal Register* notice contains a detailed description of the analysis the EPA conducted in conjunction with DOE and USDA, along with a discussion of relevant comments we received through our public comment process.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy
Assistant Administrator

13-000-3959

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, D.C. 20540

April 4, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Dear Acting Administrator Perciasepe:

We write to express concern and seek further information regarding the Environmental Protection Agency's (EPA) recent release of personal and confidential business information relating to concentrated animal feeding operations (CAFOs) to environmental groups in response to a Freedom of Information Act (FOIA) request.¹ This action demonstrates a troubling disregard for the interests of both private citizens and competitive businesses. We understand that you are currently investigating the propriety of the FOIA releases and whether the releases contain sensitive information not already publicly available.² EPA claims that the recipients of the information have agreed not to disseminate the data EPA provided to them.³ Since the information has already been released, EPA's assertion that the groups will not distribute the information is hardly reassuring. As such, the lack of appropriate safeguards within EPA's FOIA office requires your immediate attention.

As you are aware, FOIA's purpose is to provide the public with a means to access government information.⁴ The statute essentially enables people to learn "what their government is up to."⁵ FOIA is not, however, a mechanism by which private citizens or organizations may obtain personal information of other private citizens, or confidential business information.⁶

EPA's recent and overbroad application of FOIA exemptions with respect to agency information undermines FOIA's purpose by preventing the public from learning what the agency is up to.⁷ Conversely, in releasing the personal and confidential information of CAFO owners,

¹ Amanda Peterka, *EPA probes release of CAFO data to enviro groups*, Mar. 6, 2013, <http://www.eenews.net/Greenwire/2013/03/06/archive/2?terms=EPA+probes+release+of+CAFO+data+to+enviro+groups>.

² Letter from Nancy Stoner, EPA Office of Water Acting Assistant Administrator, to Agricultural Groups (Feb. 28, 2013).

³ Peterka *supra* note 1.

⁴ 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

⁵ *NARA v. Favish*, 541 U.S. 157, 171-72 (2004) (quoting *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)).

⁶ *Id.*

⁷ See David Vitter, *Clearing the Air on an Opaque EPA: EPA nominee Gina McCarthy has an awful lot to answer for*, Mar. 13, 2013, <http://www.usnews.com/opinion/articles/2013/03/13/obama-epa-nominee-gina-mccarthy-has-a-lot-to-answer-for>. See also Letter from Hon. David Vitter et al., to Hon. Arthur Elkins, Inspector Gen., Env'tl. Prot. Agency (Feb. 7, 2013).

EPA has shown no regard for the privacy and safety of private citizens, and businesses. EPA's current application of FOIA thus represents the antithesis of a transparent government and an offensive abuse of agency discretion.

Pursuant to its long term effort to regulate CAFOs, EPA proposed a rule (CAFO Reporting Rule) in October 2011 that would have required CAFO owners to submit information on their operations, including location and contact information.⁸ EPA withdrew this rule in July 2012⁹ and instead began working with states to gather the data.¹⁰ In October 2012, three environmental groups submitted FOIA requests to EPA requesting information relating to CAFOs.¹¹ In response, the EPA released to these three groups the information EPA had gathered from more than 30 state permitting authorities.¹² However, not all of the information provided to EPA should have been released in such a careless fashion. The comprehensive data released provides the precise locations of CAFOs, the animal type and number of head, as well as the personal contact information, including the names, addresses, phone numbers, and email addresses of CAFO owners.¹³ The Department of Homeland Security had previously informed EPA that the release of such information could constitute a domestic security risk.¹⁴ EPA's disregard for the implications of the release of this information is alarming.

FOIA provides nine exemptions designed to protect the disclosure of certain information.¹⁵ Exemption 4 shields the disclosure of information related to the proprietary interests of business,¹⁶ and exemption 6 safeguards the privacy interests of individuals.¹⁷ In this instance, EPA's release of the geographical location and the animal specifications of CAFOs falls within the broad definition of business information and should have been withheld.¹⁸ Moreover, EPA's release of the CAFO owners' personal contact information could result in serious and unacceptable risks for farmers, ranchers, and their families – a risk exemption 6 was designed to avoid.¹⁹

In an attempt to calm the fears of the individuals affected, EPA has reported that the three environmental groups who currently have possession of this information have agreed not to

⁸ National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 76 Fed. Reg. 204 (proposed Oct. 21, 2011) (to be codified at 40 C.F.R. pt. 9 and 122).

⁹ National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 77 Fed. Reg. 140 (Jul. 20, 2012).

¹⁰ Amanda Peterka, *Beef industry slams EPA for giving enviros access to CAFO data*, Feb. 21, 2013, <http://www.eenews.net/Greenwire/2013/02/21/archive/7>.

¹¹ Peterka *supra* note 1.

¹² *Id.*

¹³ KDHE refuses to provide EPA with Kansas CAFO information, <http://www.thestockexchangenews.com/2013/03/08/kdhe-refuses-to-provide-epa-with-kansas-cafo-information/> (Mar. 8, 2013).

¹⁴ Peterka *supra* note 9.

¹⁵ 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

¹⁶ 5 U.S.C. § 552(b)(4).

¹⁷ 5 U.S.C. § 552(b)(6).

¹⁸ 5 U.S.C. § 552(b)(4). See also Department of Justice Guide to the Freedom of Information Act: Exemption 4 (2009), http://www.justice.gov/oip/foia_guide09/exemption4.pdf.

¹⁹ 5 U.S.C. § 552(b)(6). See also Department of Justice Guide to the Freedom of Information Act: Exemption 6 (2009), http://www.justice.gov/oip/foia_guide09/exemption6.pdf.

disseminate the data.²⁰ This assurance is hollow. As the Supreme Court of the United States confirmed in *Favish*, and as EPA is aware, "release to one is release to all."²¹ Accordingly, EPA has no ability to ensure that this information will be kept private, and, moreover, private requestors cannot legally withhold the information.²² Since the very purpose of FOIA is to provide information about the government for public dissemination, an agency cannot control what an individual or organization does with information procured through a FOIA request. As such, the Senate Committee on Environment and Public Works is disappointed that EPA sought to downplay the seriousness of their mistake by inaccurately claiming that the information released will remain private.

EPA has stated that the agency plans to do an investigation to ensure that any legitimate privacy concerns are addressed.²³ While we support this initiative, we request that you brief the Committee staff on the status of your investigation by no later than April 18, 2013.

Additionally, we request that you respond to the following questions and requests no later than April 18, 2013:

1. Please detail the steps EPA is taking to investigate this privacy breach.
2. Who at EPA is in charge of the investigation?
3. Is the agency examining possible conflicts of interest or inappropriate relationships between EPA employees and groups requesting the information, in particular regarding Nancy Stoner and/or her staff?
4. Who was responsible for processing and executing the above mentioned FOIA requests?
5. What was the purpose of compiling the information released? How does the agency plan to use it? Does EPA intend to develop a national database of CAFOs? If so, will the database include information about producers and facilities not subject to regulation under the Clean Water Act?
6. How much time, money, and staff did EPA dedicate to bundling the information distributed pursuant to the above mentioned FOIA requests?
7. Please provide all documents referring or relating to the CAFO FOIA requests from Earthjustice, Natural Resources Defense Council, and Pew Charitable Trusts, including any emails sent or received on personal or private accounts.
8. For each state from which EPA sought to obtain information on livestock agriculture, please provide copies of all written, electronic, or other communications between EPA,

²⁰ Peterka *supra* note 1.

²¹ Supreme Court Rules for "Survivor Privacy" in *Favish*, <http://www.justice.gov/oip/foiapist/2004foiapist12.htm> (Apr. 9, 2004). See also *National Archives & Records Administration v. Favish*, 124 S. Ct. 1570, 1580 (2004).

²² *Id.*

²³ Peterka *supra* note 1.

its agents and partners, and the individual states from which EPA collected information on livestock facilities. In particular, this includes but is not limited to copies of all emails or other written communication with the individual states describing the types of information and the public nature of that information, which EPA sought. In addition, please provide copies of any written correspondence received from the states, including cover letters or other electronic or written communications transmitting the information. If no written records exist to memorialize the request or the response received from the states, please indicate why, and provide specific details on the state officials with whom communications were made, their authority to release records, and the general custodial chain of records that describes how EPA obtained each state's data.

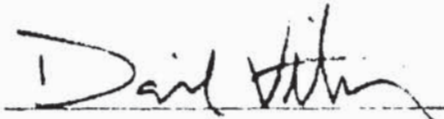
9. If a party other than EPA's Office of Water obtained the information, please include that information and all correspondence between the states and that third party, including but not limited to EPA Regional Offices, the Association of Clean Water Administrators, or third-party contractors, such as Tetra Tech. Please also include copies of all communications between these third parties and EPA.

Thank you for your prompt attention to this matter. If you have questions regarding this request, please contact Laura Atcheson with the Senate Committee on Environment and Public Works at (202) 224-6176.


Sincerely,



Deb Fischer
U.S. Senator



David Vitter
U.S. Senator



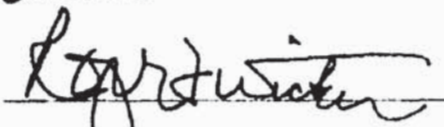
James Inhofe
U.S. Senator



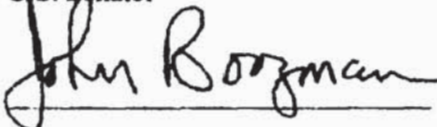
John Barrasso
U.S. Senator



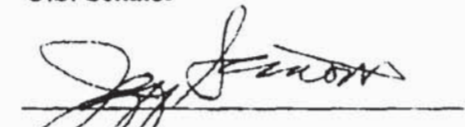
Mike Crapo
U.S. Senator



Roger Wicker
U.S. Senator



John Boozman
U.S. Senator



Jeff Sessions
U.S. Senator

The Honorable Bob Perciasepe
April 4, 2013
Page 5 of 4

cc: The Honorable Nancy Stoner
Acting Assistant Administrator for Water



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 15 2013

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

OFFICE OF WATER

Dear Senator Sessions:

Thank you for your letter of April 4, 2013, to the U.S. Environmental Protection Agency expressing concerns about the EPA's recent release of data on concentrated animal feeding operations pursuant to the Freedom of Information Act.

The EPA treats with utmost seriousness the importance of protecting the privacy of Americans recognized by the FOIA, the Privacy Act, and the EPA's Privacy Policy. In recognition of the concerns raised by the animal agricultural industry, the EPA engaged in an exhaustive review of the EPA's FOIA response to determine whether, as the agency had understood, the information the EPA released is publicly available, and whether any revisions to the agency's determination to release the information is warranted under the privacy exemption (Exemption 6) of the FOIA.

As a result of this comprehensive review, we have determined that, of the twenty-nine states¹ for which the EPA released information, all of the information from nineteen of the states is either available to the public on the EPA's or states' websites, is subject to mandatory disclosure under state or federal law, or does not contain data that implicated a privacy interest. The data from these nineteen states is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. The EPA has determined that some personal information received from the ten remaining states² is subject to Exemption 6.

The EPA has thoroughly evaluated every data element from each of these ten states and concluded that personal information – i.e., personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters – implicates a privacy interest that outweighs any public interest in disclosure.

We amended our FOIA response to redact portions of the data provided by these ten states. The redacted portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations, in order to serve the public interest of ensuring that the EPA effectively implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

¹ The twenty-nine states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

² The ten remaining states are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.

The EPA has delivered the amended data to the FOIA requestors, and has also provided copies to representatives of the animal agricultural industry. In addition, EPA requested that the previous data releases be returned to the agency, and all original requestors subsequently complied with this request.

The agency is also working to ensure that any future FOIA requests for similar information are reviewed carefully to ensure that privacy-related information is protected to the extent required by FOIA. More specifically, key leaders in our Office of Environmental Information and FOIA experts are developing training for all agency employees, including those in the Office of Water (OW), on the agency's obligations under the FOIA and responding to FOIA requestors. The training will focus on all aspects of processing a FOIA request, including how to properly safeguard information that may be exempt from mandatory disclosures, and will become a regular practice to agency personnel.

You also asked about possible federal ethics implications of the EPA employees. All EPA employees are subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, as well as the federal conflict of interest statutes. The EPA takes ethics laws and regulations very seriously and abides by government-wide standards to ensure that employees carry out their duties impartially and without conflicts.

With respect to your questions about the process used to collect information from animal feeding operations, as your letter reflects, the EPA initially proposed a rule that would have required CAFO owners to submit information about their operations to the agency. The agency later withdrew this rule and opted instead to work with states, which were already collecting this information, to gather the data. As part of this effort, the EPA established a Memorandum of Understanding (MOU) with the Association of Clean Water Administrators related to the agency voluntarily collecting information about animal feeding operations from the states. The EPA contacted states and gathered and released data from 29 state agencies, all of which have the authority to regulate animal feeding operations. The EPA's request to states only pertained to information on permitted and unpermitted CAFOs. Some states also provided information on additional animal feeding operations. The data was voluntarily submitted to the EPA in various forms (e.g., spreadsheets, public websites, databases, etc.). At the time of submission, the EPA informed each state agency that any records the EPA received would be subject to the Freedom of Information Act.

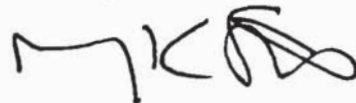
As stated by the EPA in its Federal Register notice withdrawing the data collection rule, "collecting existing information, evaluating it, and compiling it in one format will better inform the agency" in implementing its obligation to learn about the universe of animal feeding operations and protect the nation's waters under the Clean Water Act. The EPA has not determined how the data gathered will be used internally or externally. The agency commits to working together with our federal partners, industry and other stakeholders to determine the best approaches for working with the state data provided. To give you some background and context, in September 2008, the United States Government Accountability Office issued a report to congressional requestors, recommending that the EPA "should complete the agency's effort to develop a national inventory of permitted CAFOs..."³ The report also stated that "despite its long-term regulation of CAFOs, EPA has neither the information it needs to

³ U.S. Gov't Accountability Office, *Concentrated Animal Feeding Operations—EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO-08-944 5 (2008), page 48.

assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.”

Again, thank you for your letter. The EPA is committed to conducting its activities with the highest legal and ethical standards and in the public interest. If you have further questions, or you desire further information in connection with this subject, EPA staff will work with your staff to accommodate any such interest. Please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read 'N.K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

United States Senate
WASHINGTON, DC 20510

September 17, 2013

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. McCarthy:

We are writing as a follow up to our June 18, 2013, letter¹ regarding the Administration's Interagency Working Group (IWG) 2013 Technical Support Document for the Social Cost of Carbon (SCC).² While the Office of Information and Regulatory Affairs (OIRA) replied on your behalf in a July 18, 2013, letter,³ its reply was not responsive to our inquiry. We asked specific questions regarding the Environmental Protection Agency's (EPA) development and use of SCC estimates that remain unanswered. Further, we have additional concerns with EPA's application of the updated SCC developed by the IWG.

For example, EPA's recently proposed rule for steam electric power generating units⁴ illustrates a significant level of confusion associated with the discount rates chosen by the IWG to calculate the SCC. The Office of Management and Budget (OMB) Circular A-4 instructs federal agencies to apply a 7 percent discount rate as a baseline for regulatory analyses, as well as a 3 percent discount rate.⁵ However, the IWG's calculation of the SCC ignores Circular A-4 by only applying discount rates of 2.5, 3, and 5 percent. Nowhere in the document did the IWG provide an estimate of the SCC using a 7 percent discount rate; yet OIRA indicates the IWG at least considered the 7 percent discount rate.⁶

¹ Letter from Sen. Vitter, et al., to Gina McCarthy, Assistant Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency (June 18, 2013).

² Interagency Working Group on Social Cost of Carbon, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866*, U.S. GOV'T (May 2013), http://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf.

³ Letter from Howard Shelanski, Adm'r, Office of Information and Regulatory Affairs, to Sen. Vitter, et al. (July 18, 2013).

⁴ Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 78 Fed. Reg. 34432 (June 7, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-07/pdf/2013-10191.pdf>.

⁵ OFFICE OF MGMT. & BUDGET, CIRCULAR A-4: REGULATORY ANALYSIS 34 (2003), available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf>.

⁶ See OIRA Response Letter, *supra* note 2. "Using a 7 percent discount rate in this context would suggest that there is effectively no consideration of the impact of carbon emissions on future generations."

In the proposed rule, EPA presented the benefits of reduced nitrogen oxide, sulfur dioxide, and carbon dioxide in accordance with Circular A-4 by using discount rates of 3 and 7 percent.⁷ However, EPA included a footnote that states the Agency estimated the SCC based on a 5 percent discount rate "to estimate values presented for the 7 percent discount rate." In effect, the annualized benefits from reduced nitrogen oxide, sulfur dioxide, and carbon dioxide emissions that EPA accredits to the rule appear to be distorted by using the IWG's SCC estimates.

While the proposed rule provides one example of EPA's questionable use of the SCC in its cost-benefit analyses, we question how the Agency will apply the estimates to carry out President Obama's Climate Action Plan.⁸ In particular, the President called for the EPA to propose greenhouse gas new source performance standards (NSPS) for newly constructed coal- and natural gas- fired power plants as well as for existing power plants.⁹

Given the outstanding questions concerning EPA's specific role in the development of the SCC and its application of SCC calculations, we request that you respond to the following:

1. What EPA officials participated in the IWG that developed the 2010 and 2013 SCC values? Please explain the involvement of each EPA official participating in the IWG and the process by which recommendations offered by EPA to the IWG were approved.
2. Were the FUND, DICE, and PAGE models peer reviewed for the purpose of determining the value of the SCC for the United States? Did EPA review the models to ascertain the validity of the assumptions used or if the damage functions used have solid theoretical or empirical foundation? Did EPA consider alternative models to the FUND, DICE, and PAGE models? If so, please provide a list of all models considered.
3. What procedures were followed by EPA during the IWG process so as to comport with the Agency's own peer review and data quality guidelines? Which of EPA's guidelines were not followed?
4. In 2010, EPA's Office of Inspector General (OIG) found serious flaws in the peer review and evaluation of outside assessments used in the Agency's greenhouse gas endangerment finding. In order to satisfy the OIG's recommendation that minimum review and documentation requirements for assessing and accepting existing scientific and technical data from other organizations be established, EPA drafted an

⁷ Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 78 Fed. Reg. 34432, 34517 (June 7, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-07/pdf/2013-10191.pdf>.

⁸ *Id.*

⁹ EXECUTIVE OFFICE OF THE PRESIDENT, *The President's Climate Action Plan* (June 2013), <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

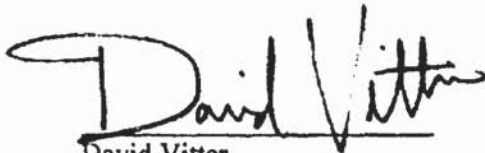
addendum to its existing guidance. In developing the SCC, please explain how the EPA complied with the December 2012 addendum to Guidance for Evaluating and Documenting the Quality of Existing Scientific and Technical Information.

5. Did EPA develop its own science/data for the underlying scientific support for determining the 2013 adjustment in the SCC? Did EPA develop its own science/data for the underlying scientific support for determining the 2010 SCC estimates?
6. Did EPA consult with any non-governmental personnel during the IWG discussions and development of the SCC estimates? If so, please provide a list of all non-governmental personnel consulted.
7. Prior to the 2010 SCC estimates, how did EPA estimate the SCC?
8. Please provide a list of rules – proposed or final – in which EPA has used the SCC developed by the IWG, including rules that applied the SCC estimates as determined by the IWG in 2010.
9. Please provide a list of rules in which the EPA intends to use the updated SCC.
10. Has EPA ever deviated from a primary estimate based on the U.S. domestic value as prescribed by OMB Circular A-4? If so, please provide a list of all EPA rules that have deviated as such. Similarly, please provide a list of all EPA regulatory actions that deviated from Circular A-4's and Circular A-94's prescription to use a 7 percent discount rate as the base-case estimate in regulatory impact analysis (RIA).
11. Has OMB provided EPA guidance on how and when the SCC estimates should be applied? Has OMB provided EPA guidance on the use of the updated SCC in RIAs? For example, how such values should be applied for estimating costs of treatment technologies or methods that increase energy use, and for disbenefits associated with those requirements?
12. In developing the SCC estimate, how did the IWG account for benefits associated with the activities that rely upon energy use that results in carbon dioxide emissions?
13. Did the EPA support the decision to update the model estimates for the 2013 SCC? If not, please explain the EPA's position regarding the adequacy of the models' updated estimates.
14. Does EPA support the decision to update estimates for the 2013 SCC by inserting them into a rule's RIA at the final rule stage, which did not allow the public to comment meaningfully upon them? If not, please explain how EPA worked to protect the integrity of administrative procedure in the IWG process.

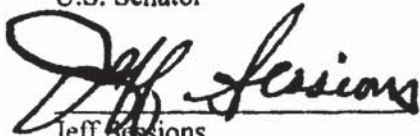
The Honorable Gina McCarthy
September 17, 2013
Page 4 of 4

Thank you for your prompt attention to this matter. We respectfully request your responses by September 30, 2013.

Sincerely,



David Vitter
U.S. Senator



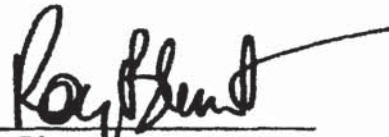
Jeff Sessions
U.S. Senator



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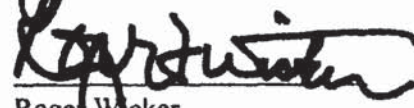
John Boozman
U.S. Senator



Roy Blunt
U.S. Senator



John Barrasso
U.S. Senator



Roger Wicker
U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 16 2014

OFFICE OF THE
ADMINISTRATOR

The Honorable David B. Vitter
Ranking Member
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for your letters to Administrator Gina McCarthy and Office of Atmospheric Programs' Director Sarah Dunham regarding the U.S. Environmental Protection Agency's (EPA) role in the U.S. Government's (USG) development of the social cost of carbon estimates and the EPA's application of those estimates. I have been asked to respond on their behalf.

As directed by Executive Orders 12866 and 13563, EPA must use the best available scientific, technical, economic, and other information to quantify the costs and benefits of rules. Rigorous evaluation of costs and benefits has been a core tenet of the EPA rulemaking process for decades through Republican and Democratic Administrations. This fundamental principle of using the best available information underpins EPA's participation in the Administration's efforts to develop and periodically update its estimates of the social cost of carbon (SCC). EPA supported the recent decision to update the USG SCC estimates to reflect the latest peer-reviewed versions of the models, replacing model versions that were developed up to ten years ago in a rapidly evolving field. The revision was also responsive to public comments received in various EPA rulemakings requesting updated SCC estimates. Consistent with the Office of Management and Budget's (OMB) guidance, the USG SCC estimates are used in EPA analyses of regulations subject to benefit-cost analysis under E.O. 12866 and 13563 to estimate the welfare effects of quantified changes in carbon dioxide (CO₂) emissions.

I am including an attachment prepared by EPA technical staff that provides background on the development of the USG SCC estimates and responses to your questions regarding EPA's role in this process and the Agency's use of these estimates.

Again, thank you for your letters. If you have further questions, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at 202-564-2095 or at lewis.josh@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "J Beauvais", with a stylized flourish at the end.

Joel Beauvais
Associate Administrator
Office of Policy

Enclosure

General Overview of the Development of the 2010 SCC Technical Support Document and 2013 Update

The SCC represents the monetized net damages of incremental changes in the amount of carbon dioxide (CO₂) emissions in a given year. The SCC is meant to be a comprehensive estimate of the monetized value of the net effects (both negative and positive) of global climate change, including, but not limited to, changes in net agricultural productivity, energy use, human health effects, and property damages from increased flood risk. As discussed in greater detail below, three peer-reviewed Integrated Assessment Models (IAMs) – DICE, FUND, and PAGE – were used to develop the USG SCC estimates. These estimates include any benefits associated with carbon dioxide emissions. For example, the FUND model incorporates increases in agricultural and forestry productivity at certain levels of warming. The model also incorporates the benefits of reductions in energy expenditures due to reduced demand for space heating and the reduction in cardio-vascular and respiratory mortality and morbidity associated with extreme cold. When all impacts are considered, at levels of warming consistent with current emissions trajectories, the long-term projected damages associated with those carbon emissions significantly exceed the projected benefits from the carbon emissions in the models. The SCC estimates reflect that net social cost.

The SCC itself is not a carbon pricing policy and therefore imposes no costs but instead allows the benefits of emission reductions to be compared to the costs of mitigation policies within benefit-cost analysis. The SCC is used by agencies in the executive branch of the U.S. federal government in their analysis of regulatory actions that are subject to Executive Order 12866 which directs agencies “to assess both the costs and benefits of the intended regulation....” The interagency process to develop USG SCC estimates was an effort to promote consistency in the way agencies quantify the benefits of reducing CO₂ emissions, or dis-benefits from increasing emissions, in these regulatory impact analyses.

When the USG SCC estimates were announced in the Federal Register in 2010, the Federal Register notice clearly noted that the SCC would be updated on an ongoing basis (“within 2 years” and when “substantially updated models become available”) to reflect the latest academic research. Consistent with this statement, the May 2013 update to the estimates was technical in nature, and only incorporated changes to the underlying IAMs. Both the models themselves and the changes to the models reflected in the May 2013 update were developed by outside experts and published in peer-reviewed literature. The updated estimates help ensure that agency regulatory analysis is based on the best available scientific, economic, and technical information.

The USG SCC estimates were developed by an interagency working group convened by the Office of Management and Budget (OMB) and the Council of Economic Advisors (CEA). This group worked together to coordinate development of both the 2010 Technical Support Document (TSD) addressing the estimates and the May 2013 technical update and related TSD. The group consisted of agencies that were likely to conduct rulemakings affecting carbon emissions (thus might need to use SCC estimates in their regulatory impact analyses) as well as relevant entities within the Executive Office of the President (EOP). Specifically, the following agencies and EOP entities participated in these interagency discussions: CEA, Council on Environmental Quality, Department of Agriculture, Department of Commerce,

Department of Energy, Department of Transportation, Environmental Protection Agency, National Economic Council, Domestic Policy Council, OMB, Office of Science and Technology Policy, and the Department of the Treasury.

As explained in the 2010 and May 2013 TSDs, three IAMs (DICE, FUND, and PAGE) were used to estimate the SCC. (For your information, the 2010 TSD is available at:

<http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf>, and the current TSD is available at:

<http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf>.) These IAMs combine climate processes, economic growth, and interactions between the climate and global economy into a single modeling framework. There are other IAMs, but in general they do not include economic damage functions that are needed to produce SCC estimates. For example, the IGSM and GCAM models (developed at MIT and Pacific Northwest National Laboratory, respectively) are used primarily for evaluating cost-effective ways of achieving various pre-specified emission targets. DICE, FUND, and PAGE are by far the most widely used and widely cited models in the economic literature that can link physical impacts to economic damages for the purposes of estimating the SCC. The National Academies of Science (NAS) identified these three models as "the most widely used impact assessment models" in a 2010 report.¹ Furthermore, in a comprehensive literature review and meta-analysis conducted in 2008, the vast majority of the independent impact estimates that appeared in the peer-reviewed literature were derived from FUND, DICE, or PAGE.²

Subsequent to the release of the 2010 TSD, all three models were updated by their (academic) developers, in part to reflect more recent information on the potential impacts of climate change. All have been used in the peer-reviewed scientific literature.³ The three models remain the most widely cited relevant models. Some public commenters who have noted the model updates and associated peer-reviewed publications urged EPA to update the SCC estimates using the updated models.⁴ The public comments submitted to EPA have focused on DICE, FUND, and PAGE and have not identified any other models to estimate the SCC.

Leading up to the May 2013 update, the interagency working group met several times and agreed to retain the 2010 SCC methodology and assumptions, while updating the estimates using current versions

¹ National Research Council. 2010. Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use. Washington, DC: The National Academies Press.

² Tol, R. 2008. The Social Cost of Carbon: trends, outliers, and catastrophes. *Econ Open-Access E-Journal* 2(25): 1-24.

³ Nordhaus, W. 2010. Economic aspects of global warming in a post-Copenhagen environment. *Proceedings of the National Academy of Sciences* 107(26): 11721-11726.

Hope, C. 2013. Critical issues for the calculation of the social cost of CO₂: why the estimates from PAGE09 are higher than those from PAGE2002. *Climatic Change* 117: 531-543.

Anthoff, D. and Tol, R.S.J. 2013. The uncertainty about the social cost of carbon: a decomposition analysis using FUND. *Climatic Change* 117: 515-530.

⁴ See Docket ID: EPA-HQ-OAR-2010-0660-10002 (pg 4); EPA-HQ-OAR-2010-0660-10888 (pg 26); EPA-HQ-OAR-2010-0799-9519 (pg 10). Documents are available in www.regulations.gov.

of the underlying models. This group worked only on updating the SCC calculations, and the product of its efforts was the updated May 2013 TSD, recently released for additional public comment with minor technical corrections. EPA officials from both the Office of Policy (OP) and the Office of Air and Radiation (OAR) participated in the interagency SCC discussions, including technical staff (economists and climate scientists) from the National Center for Environmental Economics in OP and the Office of Atmospheric Programs in OAR. Non-governmental groups did not participate in these interagency meetings. Rather, Federal agencies considered the extensive public comments on ways to improve SCC estimation received via the notice and comment period that was part of numerous rulemakings since 2006. This input was considered as part of the interagency process, including multiple requests for updated SCC estimates based on the updated models.

EPA staff from both OP and OAR provided technical expertise in climate science and economics to the broader workgroup as needed. The interagency group did not develop its own models or data for either the 2010 USG SCC estimates or the 2013 update. The models' features were left unchanged, relying on the model developers' best estimates and judgments as represented in the most recent peer-reviewed studies using their models. To the extent that the interagency group adopted unifying input assumptions (e.g., population, GDP) across the three models for the USG SCC estimation, those assumptions were drawn from the existing literature. Professional economic staff at EPA, using the modeling input parameters developed by the interagency group, oversaw the primary modeling and calculations for both the 2010 and the 2013 SCC estimates using the most recent versions of the FUND, DICE, and PAGE models. Consistent with the Administration's commitment to transparency, EPA has, upon request, provided to researchers and institutions more detailed output than is presented in the 2010 or 2013 TSD, as well as instructions, input files, and model source code.

As part of an ongoing effort to improve and refine the SCC estimates, OMB recently issued updated values that reflect two minor technical corrections to the May 2013 estimates. The first addressed a misspecification in the FUND model's computer code, as covered in an erratum to Anthoff and Tol (2013) published in October 2013 in the same journal as the underlying article (*Climatic Change*). The second addressed an inadvertent misspecification of the equilibrium climate sensitivity distribution in the FUND model. These technical corrections resulted in a small decrease in some of the SCC values. For example, the central estimated value to society in 2015 of reducing carbon emissions decreased from \$38 per metric ton of CO₂ to \$37 per metric ton (in 2007 dollars). OMB's Office of Information and Regulatory Affairs (OIRA) announced the update via a blog post⁵ and published the revised estimates in the SCC Technical Support Document (TSD).⁶ The OMB blog post also stated that in response to public and stakeholder interest in SCC, OMB will provide an opportunity for public comment on the updated estimates. The comment request, published in the Federal Register (11/26/13; 78 FR 70586), is in addition to the public comment opportunities already available through particular rulemakings.

EPA use of the Social Cost of Carbon

⁵ <http://www.whitehouse.gov/blog/2013/11/01/refining-estimates-social-cost-carbon>

⁶ <http://www.whitehouse.gov/sites/default/files/omb/assets/infoereg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf>

Prior to 2009, multiple Federal agencies, including EPA, began developing their own analyses of the SCC as part of the rulemaking process.⁷ For example, the 2008 EPA Advanced Notice of Proposed Rulemaking for Greenhouse Gases (GHGs) reported a global mean SCC of \$68 and \$40 per ton CO₂ for discount rates of approximately 2 percent and 3 percent, respectively (in 2006 dollars for 2007 emissions). In November 2007, an agency was ordered by the courts to consider the SCC in a rulemaking process. The U.S. Court of Appeals for the Ninth Circuit ordered NHTSA to revise its light truck fuel economy standards rule expeditiously to take into account the SCC, chastising the agency for disregarding the climate change implications of vehicle emissions.⁸

In 2009, the Obama Administration launched a process to determine how best to monetize the net effects (both positive and negative) of carbon dioxide emissions and sought to harmonize a range of different SCC values across multiple Federal agencies. The purpose of this process was to ensure that agencies were using the best available information and to create consistency in economic analyses associated with the rulemaking process. At the start of the 2009 effort, the Administration conducted a preliminary assessment of existing literature in order to set interim SCC values while it worked on a more comprehensive analysis. EPA and other agencies began using these interim values in rulemakings, and solicited comments "on all of the scientific, economic, and ethical issues before establishing improved estimates for use in future rulemakings."⁹ In these rulemakings, it was emphasized that the interim estimates were preliminary and that there was additional ongoing analysis underway to develop improved estimates. After the release of the interim values, public comments were considered and the Administration conducted additional technical work. The final SCC estimates were issued in February 2010. These estimates were updated in 2013 using the latest version of the peer-reviewed models.

Table 1 lists the EPA regulatory actions that have used the USG SCC estimates.

Table 1. EPA Regulatory Actions Using USG SCC Estimates

Federal Register	Rule Name	Action
Interim USG SCC Estimates: 2009-2010 EPA Rulemakings		
9/28/2009	EPA/DOT Light Duty Vehicle GHG and CAFE Standards (2012-2016)	Proposal
4/26/2010	EPA Renewable Fuel Standard Program (RFS2)	Final
6/21/2010 ¹⁰	EPA Disposal of Coal Combustion Residuals From Electric Utilities	Proposal
USG SCC Estimates based on 2010 TSD: 2010-2013 EPA Rulemakings		
5/7/2010	EPA/DOT Light Duty Vehicle GHG and CAFE Standards (2012-2016)	Final

⁷ In 2008, there were SCC estimates in rulemakings put forward by three different Federal Agencies:

- 1) A DOT rule on CAFE standards;
- 2) Two DOE rules related to the Energy Conservation Program; and
- 3) An EPA advanced notice of proposed rulemaking on greenhouse gases.

⁸ <http://www.biologicaldiversity.org/swcbd/PROGRAMS/policy/energy/cbd-vs-nhtsa-ruling-11-15-2007.pdf>

⁹ The first EPA rule to use the interim SCC estimates was the proposed rulemaking for Model Year 2012-2016 Light-Duty Vehicle Greenhouse Gas Emissions Standards. <http://www.gpo.gov/fdsys/pkg/FR-2009-09-28/pdf/E9-22516.pdf>.

¹⁰ The final USG SCC estimates were not published in time for EPA to redo their analysis for the Coal ash proposed rule. Included in the proposed rulemaking is an acknowledgement of the USG values and the Agency intent to use them in the Final rule. See p. 29, <http://www.gpo.gov/fdsys/pkg/FR-2010-06-21/pdf/2010-12286.pdf>.

8/2/2010	EPA Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone	Proposal
9/9/2010	EPA Cement NESHAP/NSPS (CO2 disbenefits) (under reconsideration)	Final
10/14/2010	EPA Sewage Sludge Incinerators NSPS/Emissions Guidelines (CO2 disbenefits)	Proposal
3/14/2011	EPA (supp) NESHAP: Mercury Cell Chlor-Alkali Plants -Amendments	Proposal
3/21/2011	EPA Sewage Sludge Incinerators NSPS/Emissions Guidelines (CO2 disbenefits)	Final
3/21/2011, Reconsid: 1/31/13	EPA NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (CO2 disbenefits)	Final
8/8/2011	EPA Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (vacated by courts, in review)	Final
9/15/2011	EPA/DOT Medium-Heavy Duty Vehicles GHG and CAFE Standards	Final
12/1/2011	EPA/DOT Light Duty Vehicle GHG and CAFE Standards (2017-2025)	Proposal
12/23/2011	EPA Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste (CO2 disbenefits)	Proposal
2/16/2012	EPA MATS Rule	Final
4/13/2012	EPA GHG Standards for New Stationary Source EGUs	Proposal
10/15/2012	EPA/DOT Light Duty Vehicle GHG and CAFE Standards (2017-2025)	Final
6/7/2013 (announced 4/19)	EPA Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	Proposal
Updated USG SCC Estimates based on 2013 TSD: 2014 EPA Rulemakings		
1/8/14 (announ. 9/20/13)	EPA GHG Standards for New Stationary Source EGUs (sensitivity analysis only)	Proposal

Both the 2010 and 2013 TSDs include guidance on how the SCC estimates should be applied in regulatory analysis going forward. According to the TSDs EPA should use the SCC in analyses or regulations subject to benefit-cost analysis under Executive Orders 12866 and 13563 to estimate the welfare effects of marginal changes in global CO₂ emissions, whether those changes are reductions in emissions (as in the EPA light duty and medium-heavy duty vehicle GHG standards) or increases in emissions (as in the 2011 EPA NSPS for sewage sludge incinerators).

Adherence to OMB and EPA Guidelines

EPA works with OMB to ensure that EPA is following guidance in assessing the costs and benefits of their agency actions. As explained below, both the use of a global value and the range of discount rates used for the SCC estimates are consistent with OMB guidance.

The OMB discount rates are designed for costs and benefits that occur in the near to medium term. Different considerations affect discount rates for impacts in the distant future. The 2010 TSD provides extensive discussion of the intergenerational discounting literature and why the three discount rates were chosen. The discount rate decisions are consistent with OMB guidance. Specifically, regarding intergenerational discounting, Circular A-4 says:

“...it would still be correct to discount future costs and consumption benefits generally (perhaps at a lower rate than for intra-generational analysis) ... Estimates of the appropriate discount rate appropriate in this case, from the 1990s, ranged from 1 to 3 percent per annum.”

According to Circular A-4, the “7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy,” while 3 percent is “the rate at which society discounts future consumption flows to their present value.” Both are designed for costs and benefits that occur in the near to medium term. The use of the 3% discount rate is also consistent with OMB guidance, because the IAMs used to generate the USG SCC estimates are designed to estimate change in future *consumption equivalent flows*, not capital (or capital equivalent) costs. However, the interagency working group noted in the 2010 TSD that there is the possibility that “climate damages are positively correlated with market returns,” which would tend to increase the certainty equivalent (consumption) discount rate, and the estimates therefore include an upper value of 5%.

Since the release of the February 2010 estimates, the federal government has continued to examine ways to discount impacts in the distant future and has supported research in this field. Notably, a recent paper in *Science* authored by thirteen prominent economists concludes that a declining discount rate would be appropriate to analyze impacts that occur far into the future.¹¹

The interagency workgroup determined that a global measure of SCC is appropriate in this context because emissions of greenhouse gases contribute to damages around the world and the world’s economies are now highly interconnected. To reflect the global nature of the problem, the USG SCC estimates incorporate the full damages caused by carbon dioxide emissions and we expect other governments to consider the global consequences of their greenhouse gas emissions when setting their own domestic policies. See 2010 TSD for more discussion.

With regard to EPA’s adherence to its peer review and information quality guidelines, consistent Agency-wide implementation of these guidelines has been an agency priority for many years. The most recent document describing this EPA guidance, *Guidance for Evaluating and Documenting the Quality of Existing Scientific and Technical Information*, was issued in December 2012 as an addendum to a 2003 EPA guidance document entitled, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*. The December 2012 addendum does not create new standards for assessing and accepting data from other organizations – the Agency’s existing information quality guidance continues to be applied to previous and future actions. Rather, the December 2012 addendum references EPA’s comprehensive existing information quality guidance and creates a consistent Agency-wide approach for reviewing and documenting the use of existing scientific and technical information from other organizations.¹²

¹¹ Arrow, K., M. Cropper, C. Gollier, B. Groom, G. Heal, R. Newell, W. Nordhaus, R. Pindyck, W. Pizer, P. Portney, T. Sterner, R.S.J. Tol, and M. Weitzman. 2013. Determining Benefits and Costs for Future Generations. *Science* 341(6144): 349–350.

¹² In the *Procedural Review of EPA’s Greenhouse Gases Endangerment Finding Data Quality Processes*, the OIG found that “EPA met statutory requirements for rulemaking and generally followed requirements and guidance related to ensuring the quality of the supporting technical information.” The 2012 Addendum helps to implement the OIG recommendation for a consistent Agency-wide approach for reviewing and documenting how it meets the 2003 Guidance.

The 2010 TSD for the USG SCC estimates provides documentation of the interagency decisions and the 2013 TSD documents the technical update. Consistent with EPA's 2003 data quality guidance document and the December 2012 addendum referenced above, the 2010 and 2013 TSDs for the USG SCC estimates describe the type and quality of information used to estimate the social cost of carbon as well as the sources for the information used (documentation of modeling inputs—e.g., climate sensitivity and socioeconomic scenarios—in the peer reviewed literature). The 2010 and 2013 TSDs also provide exhaustive documentation of how the USG's review identified, evaluated, and adopted the data, assumptions, and analytical framework used to develop the SCC estimates. Furthermore, the IAMs used to develop the USG SCC estimates are documented within the peer reviewed literature and source code is available on the model developers' websites or upon request from the relevant developer.

11-001-5271

JEFF SESSIONS
ALABAMA

COMMITTEES:
BUDGET
Ranking Member
JUDICIARY
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS

United States Senate

WASHINGTON, DC 20510-0104

September 12, 2011

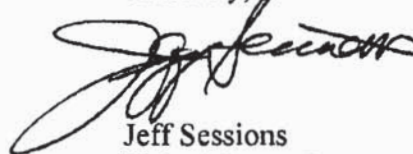
The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I am writing to request an accurate estimate of the total costs incurred or expended by the U.S. Environmental Protection Agency (EPA) from January 20, 2009 through August 31, 2011 on efforts related to reconsideration of the 2008 National Ambient Air Quality Standards for ground level ozone. Your agency's estimate should account for time of EPA staff (including salaries and benefits); expenses associated with the public meetings in Arlington, Virginia; Houston, Texas; Sacramento, California; and any other public hearings or meetings; third party expenses for consultants, scientists, economists, or other persons; or any other expenses related to this effort. In addition to the monetary costs of these efforts, please also provide the total man-hours expended by EPA staff on this effort during the stated timeframe.

Please provide your response by September 26, 2011. Your kind attention to this matter is greatly appreciated.

Sincerely,



Jeff Sessions
United States Senator

cc: Barbara J. Bennett, USEPA Chief Financial Officer

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 15 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your December 17, 2013, letter regarding the total costs incurred by the U.S. Environmental Protection Agency on efforts related to the reconsideration of the 2008 National Ambient Air Quality Standard (NAAQS) for ozone. The Office of Air and Radiation had primary responsibility for the ozone reconsideration, with staff from the Office of Research and Development and the Office of General Counsel also playing a role.

As you know, section 109(d) of the Clean Air Act requires the EPA to complete a review of the science upon which the NAAQS are based every five years. The standards for the six principal pollutants – carbon monoxide, lead, nitrogen dioxide, sulfur dioxide, particulates, and ozone – are reviewed and revised on a rotating basis. EPA staff members who worked on the reconsideration of the 2008 standard are dedicated to understanding the science of public health problems from air pollution and advising the Administrator on how to set the standards. At any given time EPA staff may be working on some aspect of one or more of the NAAQS standards. The staff continually reviews health and environmental impacts of the pollutants identified in the Clean Air Act as NAAQS pollutants. During the reconsideration of the 2008 standard, the EPA also held public hearings with a wide variety of stakeholders in attendance.

The EPA is always learning more about how to set air pollution standards. The agency is using some of the work from the reconsideration effort to help inform NAAQS decisions moving forward. The agency is working on the next regular review of the ozone standard to determine what, if any, revisions to the ozone standards may be appropriate in light of the current scientific evidence. For these reasons, it is difficult for us to estimate, with any meaningful precision, the expenses and full-time equivalent employees used for the reconsideration of the 2008 standard specifically.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet G. McCabe", is written over a horizontal line.

Janet G. McCabe
Acting Assistant Administrator

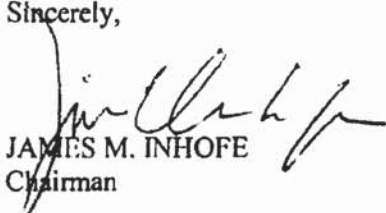
Burke
March 14, 2016
Page 2

science-based findings, so that a broad cross-section of credentialed peer reviewers and other capable investigators can independently verify the agency's scientific integrity.

In order to ensure you have the proper context, enclosed is the April 2015 letter to Administrator McCarthy and Senator Sessions' questions from the June 11 hearing where we are asking for clarification on questions two and four.

We appreciate your cooperation and should you have any additional questions please direct your staff to contact Ryan Jackson (EPW Majority) at 202-224-6176 or Brandon Middleton (Senator Sessions) at 202-224-4124. We look forward to reviewing your written responses to the above concerns.

Sincerely,



JAMES M. INHOFE
Chairman



JEFF SESSIONS
U.S. Senator

U.S. Senator Jeff Sessions

June 11, 2015 Senate Environment and

Public Works Committee Hearing

“Nomination hearing for Ann Dunkin to be Assistant Administrator for Environmental Information of the U.S. Environmental Protection Agency, Thomas Burke to be Assistant Administrator of the Office of Research and Development of the U.S. Environmental Protection Agency, and Jane Nishida to be Assistant Administrator of the Office of International and Tribal Affairs of the U.S. Environmental Protection Agency”

Questions for the Record

Dr. Thomas Burke, Nominee, Assistant Administrator, EPA Office of Research and Development

Current position: Deputy Assistant Administrator of Office of Research and Development and Science Advisor for EPA

- 1) During the April 2013 confirmation hearing for your boss (the EPA Administrator, Gina McCarthy), she promised the Environment and Public Works Committee under oath that she would “provide information . . . with respect to [her] responsibilities.” However, instead of living up to her promise, the Administrator often directs others to respond to questions that are posed *directly* to her.

For example, this past April, I and other members of the Committee wrote a letter to the Administrator regarding projected climate change impacts. Despite having committed to providing responses during this Committee’s budget hearing for EPA, the

Administrator directed Janet McCabe, the Acting Assistant Administrator for the Office of Air, to provide responses.

If you are confirmed, will you *personally* answer questions that are asked of you by members of this Committee?

- 2) The April 2015 letter asked straightforward questions related to whether projected climate impacts are actually occurring. Yet instead of reviewing and verifying the accuracy of climate projections which have served as the basis for the agency's regulatory policy and agenda, the Acting Assistant Administrator opined on *future* projections.

For example, in response to a series of questions on global cyclone activity over *the past century*, the Acting Assistant Administrator wrote:

Anthropogenic climate change is . . . expected to contribute to a number of changes in extreme weather events. . . . [T]ropical cyclone intensity is . . . expected to increase in the future, but the frequency of cyclones is likely to either decrease or remain unchanged.

Do you agree that estimates of future climate impacts do not answer whether climate impacts projected and expected to occur in the past have proven accurate?

- 3) I also asked in the letter whether the Administrator agreed that it has been nearly ten years since the last major hurricane struck the United States. The Acting Assistant Administrator's response did not answer this question.

As EPA's Science Advisor, please answer the following:

- a. Was it appropriate for the Acting Assistant Administrator to refrain from confirming whether it has been nearly ten years since the last major hurricane struck the United States?
 - b. Does EPA have the institutional capability to review recent data on hurricane landfall and determine whether it has been nearly ten years since the last major hurricane struck the United States?
- 4) Objective and unvested peer review plays a critical role in verifying the accuracy of science-based findings which serve as the basis for regulatory decisions, especially since these decisions raise the cost of energy throughout the United States.

Do you agree it is critical that all information and data which underlie these findings be made publicly available and accessible so that a broad cross-section of credentialed peer reviewers and other capable investigators alike can independently verify an agency's scientific integrity?

United States Senate

WASHINGTON, DC 20510

April 1, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Madam Administrator:

During the March 4, 2015, Committee on Environment and Public Works hearing on the Environmental Protection Agency's (EPA) Fiscal Year 2016 budget, several important questions regarding current climate science and data were raised. Although questions regarding the impacts of climate change were clear and straightforward, none of the questions received direct answers, and many responses contained caveats and conditions.

We write today to emphasize that these questions were not posed lightly or in passing. In fact, questions related to whether projected climate impacts are actually occurring are critical to verifying EPA's commitment to the best science and data, especially as the agency proposes costly carbon dioxide emissions reductions throughout the United States. Stated differently, given that the Administration's proposal to fundamentally change the nature of domestic electricity generation is based on the apparent need to avoid "devastating" climate impacts to the United States and the planet, it is imperative that the agency be candid and forthright in assessing the reality of this projection.

EPA must demonstrate its commitment to sound science and data by providing prompt and thorough responses to questions from Congress. Accordingly, we request and look forward to detailed answers to the following questions:

Drought

- 1) In its 2013 Fifth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) concluded the following:

[T]here is not enough evidence at present to suggest more than low confidence in a global-scale observed trend in drought or dryness (lack of rainfall) since the middle of the 20th century, owing to lack of direct observations, geographical inconsistencies in the trends, and dependencies of inferred trends on the index choice. Based on updated studies, AR4 conclusions regarding global increasing trends in drought since the 1970s were probably overstated. However, it is likely that the frequency and intensity of drought has increased in the Mediterranean and West Africa and decreased in central North America and north-west Australia since 1950.

Do you agree or disagree with the IPCC's conclusion? Please provide all data, analyses, and other evidence that you reviewed and relied on to reach your conclusion.

- 2) In its Special Report on Extreme Events (*Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*), the IPCC concluded the following:

There is medium confidence that since the 1950s some regions of the world have experienced a trend to more intense and longer droughts, in particular in southern Europe and West Africa, but in some regions droughts have become less frequent, less intense, or shorter, for example, in central North America and northwestern Australia.

Similarly, the U.S. Climate Change Science Program's 2008 report (*Weather and Climate Extremes in a Changing Climate*) concluded:

[D]roughts have, for the most part, become shorter, less frequent, and cover a smaller portion of the U. S. over the last century.

Do you agree or disagree with these two conclusions? Please provide all data, analyses, and other evidence that you reviewed and relied on to reach your conclusion.

- 3) At the March 2015 budget hearing, Senator Sessions asked for "the worldwide data about whether or not we are having fewer or less droughts." You responded, "I am happy to provide it but I certainly am aware that droughts are becoming more extreme and frequent."

- a. Please provide all data, analyses, and other evidence held or used by EPA regarding worldwide drought frequency.
- b. Please provide all data, analyses, and other evidence which warranted your conclusion that "droughts are becoming more extreme and frequent."

Hurricanes/cyclones

- 1) The IPCC Fifth Assessment Report concluded the following:

Current data sets indicate no significant observed trends in global tropical cyclone frequency over the past century. . . . No robust trends in annual numbers of tropical storms, hurricanes and major hurricanes counts have been identified over the past 100 years in the North Atlantic basin.

Do you agree or disagree with the IPCC assessments regarding data sets on global tropical cyclone frequency and trends in annual tropical storms, hurricanes, and major hurricanes in the North Atlantic basin?

- 2) Does EPA have any data, analyses, or other evidence demonstrating an increase in global tropical cyclone (hurricane) frequency over the past century? If so, please provide such data, analyses, or evidence.
- 3) Does EPA have any data, analyses, or other evidence demonstrating an increase in the annual number of tropical storms, hurricanes and major hurricanes over the past 100 years in the North Atlantic basin? If so, please provide such data, analyses, or evidence.
- 4) At the March 2015 budget hearing, Senator Sessions asked whether there have been more or less hurricanes in the last decade. You responded that "[t]here have been more frequent hurricanes and more intense." Please provide all data, analyses, and other evidence which warranted your response.
- 5) Do you agree or disagree that it has been nearly ten years since the last major hurricane struck the United States?

Temperature data

- 1) Dating back to the 1970's, IPCC climate models have historically predicted a significant increase in global temperatures. At the March 2015 budget hearing, Senator Sessions asked "[i]f you take the average of the models predicting how fast the temperature would increase, is the temperature in fact increasing less than that or more than that?"

You replied that you could not "answer that question specifically," but later committed to submitting written information explaining whether you believe the models have been proven correct and whether temperatures have increased less than projected or more than projected.

Please provide data and analyses showing actual global average temperatures since 1979 versus IPCC predictions, including an EPA-produced chart comparing actual global average temperature increases since 1979 (when satellite temperature data became available) versus the latest IPCC predictions. Please also provide your conclusion on whether IPCC climate models have proven correct.

- 2) At the March 2015 budget hearing, you stated "[t]here are many models and sometimes it is actually going faster and sometimes slightly slower than the model predicts, but on the whole, it *makes no difference* to the validity and the robustness of climate science that is telling us that we are facing an absolute challenge that we must address both environmentally and economically from a national security perspective, and for EPA, from a public health perspective."

Do you agree that EPA has a duty to review and verify the accuracy of climate projections which have served as the basis for the agency's regulatory policy and agenda?

Climate impact monitoring

- 1) According to EPA's website, the agency's Office of Environmental Information "manages the life cycle of information to support EPA's mission of protecting human health and the environment" and "ensure[s] the quality of EPA's information."

The Office's Quality Management Program develops "Agency-wide policies, procedures and tools for quality-related activities relating to the collection and use of environmental information."

In addition, EPA's Office of Information Collection "works in collaboration with EPA partners and customers to develop and implement innovative policies, standards and services that ensure that environmental information is efficiently and accurately collected and managed."

What policies do these and other offices at EPA have in place to monitor and verify the accuracy of agency climate projections? Please provide all reports, analyses, memoranda, and other information from the past ten years in which EPA has reviewed the accuracy of its climate projections.

- 2) What portion of EPA's budget request for FY 2016 is dedicated to monitoring and verifying the accuracy of the agency's climate projections?

Please provide your responses no later than April 21, 2015.

Very truly yours,



Senator Jeff Sessions



Senator James M. Inhofe



Senator Roger Wicker



Senator John Barrasso



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 12 2016

Office of
Research and Development

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your March 14, 2016, letter regarding two questions from Senator Jeff Sessions and my corresponding answers from my June 11, 2015, confirmation hearing. I appreciate this opportunity to further clarify my responses.

You stated that you would like to understand my position on "the relevance of future projected climate impacts in assessing the accuracy of climate impacts that were previously projected and expected to occur in the past." You asked whether the accuracy of climate impacts that were projected and expected to occur in the past may be determined by estimates of future climate impacts.

The scientific community bases their conclusions, projections, and predictions on available evidence. However, predictions of future events based upon past evidence will always include some degree of uncertainty. In the case of climate events, there is a growing and strong preponderance of evidence about the broad climate impacts that are increasingly recognized by the scientific and business communities.¹

These projections include a level of confidence associated with them to account for the inherent uncertainties in climate impact models, projections, and analyses. Climate scientists are constantly revising their models and projections in order to incorporate new evidence and data. I believe it is important that as new data becomes available regarding impacts and accuracy of projections, we continue to refine our future projections of climate impacts.

You also asked me to comment on the need for the EPA to make publicly available all information and data underlying and supporting the agency's science-based findings, so that a broad cross-section of credentialed peer reviewers and other capable investigators can independently verify the agency's scientific integrity.

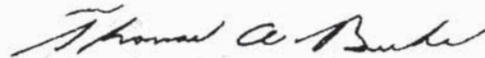
¹ Intergovernmental Panel on Climate Change. 2014. *Climate Change 2014: Synthesis Report*.

The EPA is committed to the principles of transparency and data access as outlined in the February 2013 John P. Holdren memorandum regarding increasing access to the results of federally funded scientific research.² I personally am committed to this, as well.

Your question addresses a wide range of scientific activities, including human epidemiological studies, work supported by industry, and studies supported by funding sources far beyond the EPA's control. Within the scientific community, there is deep respect for the peer review and publication process to ensure our decisions are guided by strong science. Making all raw data publicly available presents tremendous challenges, including the important requirements to protect human subjects and confidential business information. I remain committed to pushing forward with ever increasing transparency, data accessibility, and peer review to strengthen the scientific basis for our public health and policy decisions and to ensure the public at large may contribute to our understanding of these issues.

Again, thank you for your letter. If you have any further questions, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,



Thomas A. Burke, Ph.D., MPH
Deputy Assistant Administrator and
EPA Science Advisor

² https://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf

67-000-2970
Congress of the United States

Washington, DC 20515

February 16, 2007

The Honorable Stephen L. Johnson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

CCY
Charles
Stephanie
John
Catherine
Chris
Kevin

Dear Administrator Johnson:

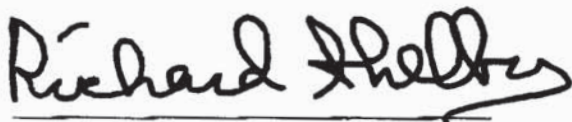
We are writing today to urge you to continue funding for the National Rural Water Association's grassroots training and technical assistance programs previously funded through Environmental Programs and Management. The original funding for this crucial program has been removed due to Congress passing a year long continuing resolution. Your help in prioritizing rural water funding within the Environmental Protection Agency's fiscal year 2007 budget is key to this program's survival and the long term viability of many rural water programs throughout the nation.

Many small communities in Alabama can be overwhelmed by the EPA's many rules and regulations. While these mandates from the federal government are important to protect and preserve our natural resources, rural communities must be given the help they need. Small communities are in short supply of the technical and financial resources needed to comply with EPA regulations. Funding for the National Rural Water Association will continue this free training and on-site technical assistance to communities. Without this free and local assistance these costs will be passed along to the customers through higher water rates.

The National Rural Water Association empowers rural water agencies and allows them to conform to the necessary federal guidelines. This nationwide effort is truly unique because it accomplishes progressive environmental protection with the support of the local community. We urge you to continue this important program that has helped so many small communities in the past. Your immediate attention to this matter is appreciated and we look forward to your response.

Thank you for your time and attention to this urgent matter.

Sincerely,


Richard Shelby
John Edwards

Page 2: S. Johnson Letter

Robert B. Adkins

To Bonnier

Mike Regan - A

Arthur Davis

Spencer Burch

Terry Swartz

Ben Cramer

RCS/gmp



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 2007

The Honorable Jeff Sessions
United States Senate
Washington, DC 20515

OFFICE OF
WATER

Dear Senator Sessions:

Thank you for your letter of February 16, 2007, to Stephen L. Johnson, Administrator of the Environmental Protection Agency (EPA), expressing your support for provision of funding to the National Rural Water Association (NRWA) from discretionary money that may be available to the Agency in the final Fiscal Year 2007 budget. I have been asked to respond to your letter on behalf of the Administrator. EPA agrees with you that it is critical to provide training and technical assistance to small drinking water systems to ensure that they are able to comply with standards under the Safe Drinking Water Act.

As you know, the NRWA receives financial assistance through Congressionally-directed funding in EPA's appropriations bills. EPA is reviewing the final appropriations language and will evaluate funding options in light of mandatory fixed costs and other priorities.

Irrespective of our final decision on funding for NRWA, I want to assure you that EPA will continue to support small systems through our other activities. The Agency supports training and develops targeted tools to help support small system implementation of regulatory requirements. States can also use funding from their Drinking Water State Revolving Fund (DWSRF) grants to support small systems. In addition to the \$14 million expended in FY 2006 for technical assistance to small systems, states also expended an additional \$38 million for other set-aside activities that primarily benefit small systems.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Steven Kinberg, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-5037.

Sincerely,

Benjamin H. Grumbles
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

10-001-3141

July 29, 2010

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

With the recent publication of the Environmental Protection Agency's (EPA) proposal for regulating coal combustion residues (CCRs), we write to express our concerns about the serious economic and environmental consequences resulting from the regulation of CCRs as a special listed waste under subtitle C of the Resource Conservation and Recovery Act (RCRA).

Despite decades of work by the EPA confirming that the regulation of CCRs under RCRA's subtitle C hazardous waste program is not warranted, the proposed subtitle C option would reverse these prior conclusions and regulate CCRs under RCRA's hazardous waste controls, placing unworkable facility and operational requirements on our state utilities. Indeed, the subtitle C option would regulate CCRs more stringently than any *other* hazardous waste by applying the hazardous waste rules to certain inactive and previously closed CCR units. EPA has never before interpreted RCRA in this manner in its 30 years of administering the federal hazardous waste rules. The subtitle C approach simply is not supportable given its myriad adverse consequences and the availability of an alternative, less burdensome regulatory option under RCRA's non-hazardous waste rules that, by EPA's own admission, will provide an equal degree of protection to public health and the environment.

Moreover, we are concerned that the subtitle C option will result in the loss of important high-paying jobs in the CCR beneficial reuse and related "green" jobs markets, at a time when unemployment is high and the pace of economic recovery is uncertain. Federal policies should encourage greater recycling of CCRs by facilities that use coal. Despite assurances by the Administration that regulation of CCRs under subtitle C would have no negative impact on the beneficial reuse market, the mere discussion of regulating CCRs under RCRA's hazardous waste program has already produced a downturn in the market for these materials. We believe that those who argue that beneficial use of CCRs will increase under the subtitle C option do not appreciate the realities of the potential legal liabilities under today's tort system. The reality is that the market place is already reacting negatively to these concerns, and we are losing important green jobs, along with the greenhouse gas emission reduction benefits that flow from the use of CCRs in numerous products, particularly in transportation infrastructure projects.

We are also deeply concerned that the subtitle C approach will, in one fell swoop, increase by approximately *50-fold* the volume of hazardous waste disposed of annually in land disposal units (from the current volume of two million tons per year to over 100 million tons of CCRs disposed of annually). This will create an immediate and critical shortfall in hazardous waste disposal capacity, adversely impacting the pace of cleanups under Superfund and other ongoing federal

The Honorable Lisa P. Jackson
July 29, 2010
Page 2

and state remedial and Brownfield programs. In fact, state environmental protection agencies from around the Nation have repeatedly cautioned EPA that the subtitle C approach for CCRs will overwhelm existing hazardous waste disposal capacity and further strain already stretched budgets and staff resources. It makes no sense to impose these adverse consequences on the existing hazardous waste program and state resources for a material that EPA has repeatedly found does not warrant regulation under RCRA subtitle C.

Given the ash spill disaster at the Tennessee Valley Authority's Kingston facility in 2008, we understand the EPA raising concerns about the handling and storage of CCRs. All operators should take appropriate precautions and those who fail to do so should be held accountable. However, in light of the nearly unanimous opposition from the states and the opposition and concern expressed by other federal agencies that participated in the interagency review process of the CCR proposal, we urge EPA not to pursue the subtitle C option. Instead, there is little question that EPA can develop a federal program for CCR disposal practices under RCRA's subtitle D non-hazardous waste program that ensures protection of human health and the environment without the attendant adverse consequences of the Subtitle C option on jobs, CCR beneficial uses and state budgets and resources. Again, we strongly recommend the EPA pursue a subtitle D approach for CCRs.

Thank you for your consideration of this important matter. We look forward to your response and working with you to address this issue in a manner that is both environmentally and economically sound.

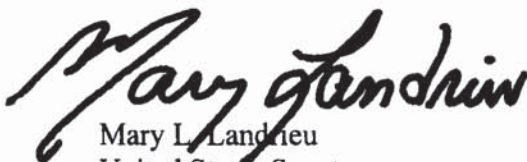
Sincerely,



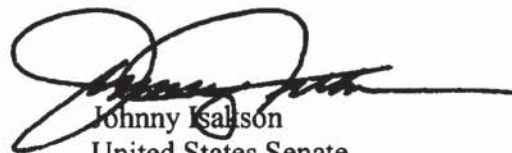
Sam Brownback
United States Senate



Kent Conrad
United States Senate



Mary L. Landrieu
United States Senate



Johnny Isakson
United States Senate



Christopher S. Bond
United States Senate



Pat Roberts
United States Senate



David Vitter
United States Senate




Thad Cochran
United States Senate



Michael B. Enzi
United States Senate



Lisa Murkowski
United States Senate



Blanche L. Lincoln
United States Senate



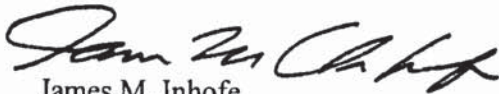
George V. Voinovich
United States Senate



Byron L. Dorgan
United States Senate



Ben Nelson
United States Senate



James M. Inhofe
United States Senate



Jim Bunning
United States Senate



John Barrasso
United States Senate



Saxby Chambliss
United States Senate



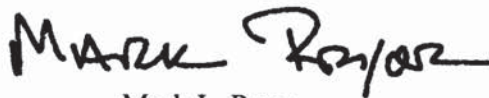
Jeff Sessions
United States Senate



Lamar Alexander
United States Senate



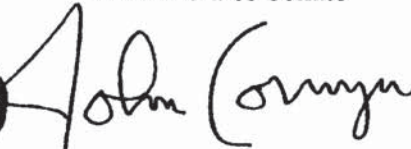
Evan Bayh
United States Senate




Mark L. Pryor
United States Senate



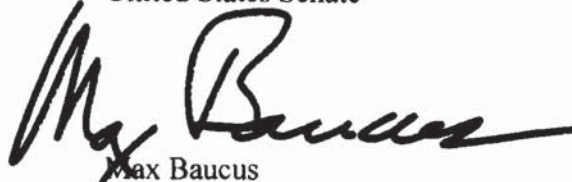
Claire McCaskill
United States Senate



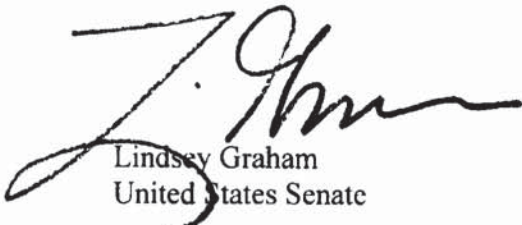
John Cornyn
United States Senate



Roger F. Wicker
United States Senate



Max Baucus
United States Senate



Lindsey Graham
United States Senate



Mark R. Warner
United States Senate



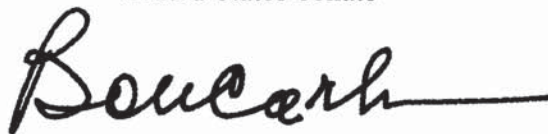
Herb Kohl
United States Senate



Richard Burr
United States Senate



Jim Webb
United States Senate



Bob Corker
United States Senate



Orrin G. Hatch
United States Senate



Mike Johanns
United States Senate

The Honorable Lisa P. Jackson
July 29, 2010
Page 5

A handwritten signature in black ink, appearing to read "Robert F. Bennett". The signature is fluid and cursive, with a large initial "R" and "B".

Robert F. Bennett
United States Senate



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 2 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of July 29, 2010 to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, expressing your interest in EPA's proposed rulemaking governing the management of coal combustion residuals (CCRs) and the potential adverse impacts associated with a possible re-classification of CCRs as a hazardous waste. I appreciate your interest in these important issues.

In the proposed rule, EPA seeks public comment on two approaches available under the Resource Conservation and Recovery Act (RCRA). One option is drawn from remedies available under Subtitle C, which creates a comprehensive program of federally enforceable requirements for waste management and disposal. The other option includes remedies under Subtitle D, which gives EPA authority to set performance standards for waste management facilities which are narrower in scope and would be enforced primarily by those states who adopt their own coal ash management programs and by private citizen suits.

EPA is not proposing to regulate the beneficial use of CCRs. EPA continues to strongly support the safe and protective beneficial use of CCRs. However, EPA has identified concerns with some uses of CCRs in an unencapsulated form, in the event proper practices are not employed. The Agency is soliciting comment and information on these types of uses.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

United States Senate

WASHINGTON, DC 20510-0104

November 1, 2010

The Honorable Lisa Jackson
Administrator
US Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

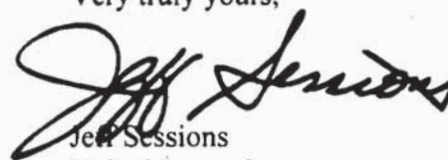
Dear Administrator Jackson:

I am writing to express my utmost support of the application submitted by the Birmingham Brownfield Assessment Coalition (BBAC) to the US Environmental Protection Agency for the Brownfields Assessment Grant.

This funding, if awarded, would enable BBAC to access and redevelop brownfields sites within the City of Birmingham with an emphasis on Jones Valley, an area of nine high-poverty communities. The BBAC would restore the brownfields into industrial parks, retail and service businesses, residential housing, neighborhood parks, green spaces, and community gardens in order to provide long-term economic and environmental benefits.

This project is a priority for the Birmingham area, and funding assistance is vital to see this project to fruition. Upon review of this grant application, I am hopeful you will agree that it has merit and is worthy of funding. Therefore, I urge your full consideration and await a favorable response. If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



Jeff Sessions
United States Senator

JS: ch

BIRMINGHAM

341 VANCE FEDERAL BUILDING
1800 FIFTH AVENUE NORTH
BIRMINGHAM, AL 35203-2171
(205) 731-1500

HUNTSVILLE

REGIONS CENTER, SUITE 802
200 CLINTON AVENUE, N.W.
HUNTSVILLE, AL 35801-4932
(256) 533-0979

MOBILE

BB&T CENTRE, SUITE 2300A
41 WEST I-66 SERVICE ROAD NORTH
MOBILE, AL 36608-1291
(251) 414-3083

MONTGOMERY

7550 HALCYON SUMMIT DRIVE
SUITE 150
MONTGOMERY, AL 36117
(334) 244-7017



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 1 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of November 1, 2010, supporting the Brownfields Grant Proposal from the city of Birmingham, Alabama. I appreciate your interest in the Brownfields Program and your support of this proposal.

As you know, the Small Business Liability Relief and Brownfields Revitalization Act assists states and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. This program is an excellent example of the success that is possible when people of all points of view work together to improve the environment and their communities.

Last year's application process was highly competitive, with EPA evaluating more than 600 grant proposals. From these proposals, EPA was able to announce the selection of approximately 300 grants.

EPA's selection criteria for grant proposals are available in the *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (August 2010)*, posted on our brownfields web site at www.epa.gov/brownfields. Each proposal will be carefully reviewed and evaluated by a selection panel that applies these objective criteria in this highly competitive program. Be assured that the grant proposal submitted by the city of Birmingham will be given every consideration.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Amy Hayden, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0555.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

11-061-6287

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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MIKE ENGLISH, NEBRASKA
JOHN P. MURPHY, ARIZONA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

CHRISTINA GILLES, MAJORITY STAFF DIRECTOR
BETH ZAK, MAJORITY STAFF DIRECTOR

September 27, 2011

Ms. Nancy Stoner
Acting Assistant Administrator for Water
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Stoner:

On behalf of the Senate Committee on Environment and Public Works, we invite you to testify before the Subcommittee on Water and Wildlife at a hearing entitled, "Nutrient Pollution: An Overview of Nutrient Reduction Approaches." The hearing will be held on Tuesday, October 4, 2011, beginning at 2:30 PM in Room 406 of the Dirksen Senate Office Building. The purpose of this hearing is to understand the current extent and impacts of nutrient pollution in the United States; to understand the contributions of various source sectors to the nutrient problem; and to examine the effectiveness of various approaches in mitigating the effects of nutrient pollution.

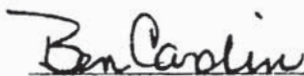
In order to maximize the opportunity to discuss this matter with you and other witnesses, we are asking that your oral testimony be limited to five minutes. Your written testimony can be comprehensive and will be included in the printed record of the hearing in its entirety, together with any other materials you would like to submit.

To comply with Committee rules, please provide 100 double-sided copies of your testimony at least 48 hours in advance of the hearing to the Committee at the following address: 410 Dirksen Senate Office Building, Washington, DC 20510-6175. To ensure timely delivery, the copies of testimony must be hand delivered to 410 Dirksen. Packages sent through FedEx, U.S. Mail, or overnight delivery services will be subject to offsite security measures that will delay delivery. Please also email a copy of your testimony (in both MS Word and as a PDF file) to the attention of Katie Lee, Katie_Lee@epw.senate.gov, at least 48 hours in advance. This email address will be used later to quickly finalize hearing transcripts.

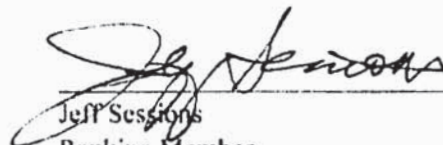
If you plan to use or refer to any charts, graphs, diagrams, photos, maps, or other exhibits in your testimony, please deliver or send one identical copy of such material(s), as well as 100 reduced (8.5" x 11") copies to the Committee, attention of Katie Lee, Katie_Lee@epw.senate.gov, at the above address at least 48 hours in advance of the hearing. Exhibits or other materials that are not provided to the Committee by this time cannot be used for the purpose of presenting testimony.

If you have any questions or comments, please feel free to contact Jason Albritton of the Committee's Majority staff at 202-224-8832, Elizabeth Fox of the Committee's Minority staff at 202-224-6176, Royce Brooks of Senator Cardin's staff at 224-4524, or Jeff Wood of Senator Sessions' staff at 224-4124.

Sincerely,



Benjamin L. Cardin
Chairman
Subcommittee on Water and Wildlife



Jeff Sessions
Ranking Member
Subcommittee on Water and Wildlife

Congress of the United States

Washington, DC 20515

January 19, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

Recently, there have been reports in the press that the Environmental Protection Agency (EPA) is negotiating a settlement agreement with the Conservation Law Foundation and the Buzzards Bay Coalition to resolve two lawsuits. One lawsuit alleges EPA has a non-discretionary duty under the Clean Water Act to regulate pollution of groundwater. The other lawsuit alleges EPA has a non-discretionary duty to mandate states regulate nonpoint source pollution. Since neither allegation is true, we were very surprised to learn that EPA is choosing to settle these cases, rather than to honor the limits of its authority under the Clean Water Act and vigorously defend these cases.

We are concerned that EPA has demonstrated a disturbing trend recently, whereby EPA has been entering into settlement agreements that purport to expand Federal regulatory authority far beyond the reach of the Clean Water Act and has then been citing these settlement agreements as a source of regulatory authority in other matters of a similar nature.

One example of this practice is EPA's out-of-court settlement agreement with the Chesapeake Bay Foundation in May 2010. EPA has referred to that settlement as a basis for its establishment of a Federal total maximum daily load (TMDL) for the entire 64,000 square-mile Chesapeake Bay watershed and EPA's usurpation of state authority to implement TMDLs in that watershed. EPA also has referred to that settlement as a basis for its plan to regulate stormwater from developed and redeveloped sites, which exceeds the EPA's statutory authority.

Another example is EPA's out-of-court settlement agreement with the Natural Resources Defense Council, also in May 2010, under which it agreed to impose regulatory reporting requirements on entities that are not regulated by the Clean Water Act.

As an Executive Branch agency, EPA must carry out the laws passed by Congress. EPA cannot exceed the authority granted to it by Congress. Indeed, the Executive Branch has a clear duty to vigorously defend, to the highest level, lawsuits that seek to compel action by any agency that is not authorized by law. Further, we are sure we do not need to remind you the expenditure of Federal funds to carry out unauthorized actions may be a violation of the Anti-Deficiency Act, which imposes personal liability on Federal officers.

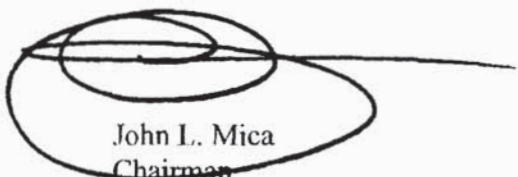
We are not asking for any details of your settlement discussions. However, to allow us, other members of Congress, and the public to fully understand the breadth of the Federal regulatory authority that EPA believes it can assert, please provide responses to the following questions within two weeks of the date of this letter:

1. Does EPA consider a ground water aquifer to be a water of the United States under the Clean Water Act? Please explain.
2. Does EPA consider a ground water aquifer to be a point source? Please explain.
3. Does EPA believe it has the authority under the Clean Water Act to regulate leaching of pollution into ground water? Please explain.
4. Does EPA believe it has the authority under the Clean Water Act to regulate the direct discharge of pollutants into ground water? Please explain.
5. According to a recent press article, an EPA spokeswoman has said section 208 of the Clean Water Act does not authorize EPA to exercise any Federal regulatory authority over nonpoint sources. Please confirm for us that the Clean Water Act does not provide EPA with any authority to craft section 208 areawide plans or to exercise any Federal regulatory authority over nonpoint sources under section 208 or any other section of the Clean Water Act, and that section 208 is consistent with the rest of the Clean Water Act that leaves the management of nonpoint sources to the states.
6. Does EPA believe it has the authority under the U.S. Constitution and under the Clean Water Act to commandeer a state legislature and require a state to enact an enforceable regulatory program for nonpoint sources? Please explain.
7. Does EPA believe it has the authority to withhold Federal funding from a state that is in compliance with an areawide waste treatment management plan that has been approved under section 208? Please explain.
8. Does EPA believe that a requirement in section 603(f) of the Clean Water Act that a state fund projects that are consistent with a state's plan developed under section 208 of the Act constitutes authority to require a state to enact an enforceable regulatory program for nonpoint sources? Please explain.
9. Does EPA believe that a requirement under 603(f) of the Clean Water Act that a state fund projects that are consistent with a state's plan developed under section 208 of the statute constitutes authority to withhold Federal funding from a state whose areawide waste treatment management plan does not include an enforceable regulatory program for nonpoint sources? Please explain.

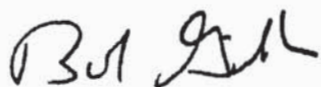
The Honorable Lisa P. Jackson
January 19, 2012
Page 3

Thank you for your prompt attention to this matter.


Sincerely,



John L. Mica
Chairman
Committee on Transportation
and Infrastructure



Bob Gibbs
Chairman
Subcommittee on Water Resources
and Environment



James M. Inhofe
Ranking Member
Committee on Environment
and Public Works



Jeff Sessions
Ranking Member
Subcommittee on Water and Wildlife



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 13 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Jeff Sessions
Ranking Member
Subcommittee on Water and Wildlife
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your letter of January 19, 2012, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the EPA's ongoing settlement negotiations with the Conservation Law Foundation (CLF) and the Buzzards Bay Coalition (BBC).

Enclosed are responses to your questions. Thank you for your interest in this important subject matter. If you have further questions, please contact me or have your staff contact Greg Spraul in my office at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvin", is placed below the word "Sincerely,".

Arvin Ganesan
Associate Administrator

Enclosure

Enclosure

Responses to questions contained in a letter from Reps. Mica, Inhofe, Gibbs, and Sessions dated January 19, 2012

1. Does EPA consider a ground water aquifer to be a water of the United States under the Clean Water Act? Please explain.

No. The EPA does not consider a ground water aquifer to be a water of the United States under the Clean Water Act. Ground water is not regulated by the Clean Water Act.¹ The EPA has a longstanding and consistent interpretation that the Clean Water Act may cover discharges of pollutants from point sources to surface water that occur via ground water that has a direct hydrologic connection to the surface water.² Courts have cited the EPA's most recent preamble discussing this interpretation in affirming Clean Water Act authority over discharges to ground water that has a direct hydrologic connection to surface water.³ Whether or not such a hydrological connection exists, and the need for a National Pollutant Discharge Elimination System (NPDES) permit for any given source, is highly dependent on the facts and circumstances surrounding each permitting situation.⁴ A number of factors are relevant in evaluating the connection between ground water and surface water, such as geology, flow and slope. A fact-specific evaluation could support a determination that an NPDES permit is required or a determination that one is not required.⁵

2. Does EPA consider a ground water aquifer to be a point source? Please explain.

No. The EPA does not consider a ground water aquifer to be a point source. As discussed in the response to question 1, however, a discharge of pollutants into an aquifer may, in a specific factual situation, constitute a point source discharge subject to regulation under the Clean Water Act in circumstances where an aquifer has a direct hydrological connection to a surface water.

3. Does EPA believe it has the authority under the Clean Water Act to regulate leaching of pollution into ground water? Please explain.

No. The EPA does not believe it has the authority to regulate leaching of pollution into ground water. As discussed in the response to question 1, however, leaching associated with a point source discharge to an aquifer that connects directly to a surface water may require an NPDES permit.

¹ Amendments to Water Quality Standards Regulations, 56 Fed. Reg. 64,876, 64,892 (Dec. 12, 1991)

² See further discussion in the following preambles: Proposed National Pollutant Discharge Elimination System (NPDES) Regulations for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2,960, 3,015 (Jan. 12, 2001); NPDES General Permits for Storm Water Discharges from Construction Activities, 63 Fed. Reg. 7,858, 7,881 (Feb. 17, 1998)

³ See, e.g., *Northwest Env'tl Def. Ctr. v. Grabhorn, Inc.*, 2009 WL 3672895 *11 (D. Or. 2009) ("In light of the EPA's regulatory pronouncements, this court concludes that, contrary to *Umatilla*, the CWA covers discharges to navigable surface waters via hydrologically connected groundwater"); *Greater Yellowstone Coalition v. Larson*, 641 F.Supp.2d 1120, 1138 (D. Idaho 2009) ("there is little dispute that if the ground water is hydrologically connected to surface water, it can be subject to [Clean Water Act section 401 certification]. The EPA's interpretation is, 'in general, collected or channeled pollutants conveyed to surface water via groundwater can constitute a discharge subject to the Clean Water Act.' 66 Fed. Reg. 2960, 3017 (Jan. 12, 2001)").

⁴ 66 Fed. Reg. 3,015, 3,017; 63 Fed. Reg. 7,881.

⁵ The following are facilities, with current NPDES permits, that discharge into groundwater that has a direct hydrologic connection to surface waters provided as an exemplary list where the facts led to NPDES permit issuance: Managaha Island Wastewater Treatment Plant, Saipan, Northern Mariana Islands - Permit No. MP0020371, Menominee Neopit Wastewater Treatment Facility - Permit No. WI0073059, Lac Du Flambeau Wastewater Treatment Facility - Permit No. WI0036498, Molycorp, Inc., Molybdenum Mine - Permit No. NM0022306.

7. Does EPA believe it has the authority to withhold Federal funding from a state that is in compliance with an areawide waste treatment management plan that has been approved under section 208? Please explain.

The EPA may withhold federal funding from a state for a variety of reasons, including non-compliance with an applicable grant agreement or non-compliance with requirements of Title VI of the Clean Water Act. The corrective action provision with respect to the Clean Water State Revolving Funds can be found at Clean Water Act section 605.

8. Does EPA believe that a requirement in section 603(f) of the Clean Water Act that a state fund projects that are consistent with a state's plan developed under section 208 of the Act constitutes authority to require a state to enact an enforceable regulatory program for nonpoint sources? Please explain.

No. The EPA does not believe Clean Water Act section 603(f) authorizes the agency to require a state to enact an enforceable regulatory program for nonpoint sources. Clean Water Act section 603(f) states, "A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 1285(j), 1288 [208], 1313(e), 1329, and 1330 of this title." As discussed in greater detail in the response to question 6, the EPA does not believe that section 208 or any other provision in the Clean Water Act authorizes the EPA to require a state to enact an enforceable regulatory program for nonpoint sources. Consequently, the reference to section 208 plans in section 603(f) does not constrain state funding decisions due to the absence of an enforceable nonpoint source regulatory program.

9. Does EPA believe that a requirement under 603(f) of the Clean Water Act that a state fund projects that are consistent with a state's plan developed under section 208 of the statute constitutes authority to withhold Federal funding from a state whose areawide waste treatment management plan does not include an enforceable regulatory program for nonpoint sources? Please explain.

No. The EPA does not believe Clean Water Act section 603(f) authorizes the agency to withhold federal funding from a state whose areawide waste treatment management plan does not include an enforceable regulatory program for nonpoint sources. As discussed in greater detail in the responses to question 6 and 8, the EPA does not believe that section 208, or any other provision in the Clean Water Act, authorizes the agency to require a state to enact an enforceable regulatory program for nonpoint sources. Consequently, the reference to section 208 plans in section 603(f) does not constrain state funding decisions due to the absence of an enforceable nonpoint source regulatory program or authorize the EPA to withhold funding from a state that has not established such a program.

United States Senate

WASHINGTON, DC 20510-0104

February 24, 2012

The Honorable Barack Obama
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President:

I am writing today to urge your Administration to take overdue but necessary action to confront soaring gasoline prices. In the last three years, gas prices have doubled, draining the disposable income of millions of hardworking Americans. In 2011, the typical U.S. household already spent \$4,155 on gasoline, almost 10 percent of their income. Yet some analysts now predict prices may rise this year to more than \$5.00 per gallon.

In a speech this Thursday, you stated that "there are no quick fixes to this problem. You know we can't just drill our way to lower gas prices." While we should explore a variety of energy resources—most especially those which do not put taxpayer dollars at risk—I respectfully disagree that we cannot utilize our remarkably vast untapped energy reserves to provide Americans with much-needed relief.

I reject the defeatist view that says the nation that won two world wars, pioneered space travel, and overcame the Soviet Empire is now helpless in the face of high prices at the pump. We are not at the mercy of dictators, cartels, and events beyond our control.

Simply by removing the bureaucratic barriers imposed by your own administration we can begin to make progress. But we can go much further than that.

Powerful action to harness America's untapped oil and gas resources would place downward pressure on prices and speculation in the short-run and, by surging global supply, would serve to keep prices low in the future. Crucially, it would also provide millions of Americans

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with good-paying private-sector jobs; produce substantial royalties for local, state, and federal governments; reduce our enormous trade imbalance; and put an end to our huge wealth transfer from America to competitors overseas.

I therefore recommend the following proposals for immediate implementation:

1. Restore the bipartisan 2010-2015 offshore lease plan to ensure that the 31 lease sales called for in that plan are completed expeditiously. Your Administration only directed one lease sale in 2011 and has announced just one lease sale for 2012, far short of the number of sales that would have occurred over this period under the original 2010-2015 plan that your Administration discarded.
2. Take all necessary steps to accelerate the leasing and permitting process for domestic shale oil production. The United States has recoverable shale oil reserves estimated at 800 billion to 1.2 trillion barrels, meaning our nation has potentially three to four times more recoverable oil than any other country in the world except Canada.
3. Maximize energy production from federal lands. As I and 21 other Senators noted in a January 25, 2012 letter to you, actual oil production on federal lands is now just 714 million barrels per year, a 16 percent decline from what was projected just five years ago. This decline must be reversed.
4. End the de facto moratorium on permitting for offshore oil and gas production.
5. Direct the EPA, the Department of Energy, and other federal agencies to grant all necessary waivers and approvals to oil and gas refineries to facilitate maximum production at minimum cost. Refinery expenses comprise 11 percent of the price for gasoline that Americans pay at the pump, but your Administration has imposed numerous regulations that have driven refining costs up, not down.
6. Abandon your proposal to increase taxes and fees levied on U.S. energy production by more than \$40 billion. These additional costs would

The Honorable Barak Obama

February 24, 2012

Page 3

be passed along to consumers, taking money out of their pockets and discouraging needed domestic production.

7. Approve the Keystone XL pipeline and grant necessary waivers, licenses, and permits, where possible, to ensure expedited completion of this important North American energy project. The pipeline would carry 700,000 barrels a day to U.S. refineries, which is nearly half what the U.S. currently imports from the entire Middle East.

America has the potential to fundamentally shift the balance of power in global energy production—to produce more energy, more efficiently and more cheaply, than your Administration has recognized. Such bold steps will broadcast an unmistakable signal to the world that not only places downward pressure on prices in the near-term but helps deliver a future of abundant, affordable energy. Moreover, unlike costly short-term stimulus, achieving energy independence would provide long-term relief to both struggling families and our indebted treasury.

I look forward to working with you on this important matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeff Sessions", with a large, stylized flourish extending from the end of the signature.

Jeff Sessions
United States Senator

JS:ph

12-001-9326

SENATORS:

THOMAS R. CARPER
DAN COATS
MICHAEL B. ENZI
DIANNE FEINSTEIN
JAMES M. INHOFE
DANIEL K. INOUE
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Jeff Sessions
Mark Pryor
United States Senators

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RECEIVED
2012 NOV 19 PM 1:45
OFFICE OF THE
EXECUTIVE SECRETARIAT

November 13, 2012

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004-2403

Dear Mr. and Mrs. Jackson:

On behalf of the Congressional Committee, we have the pleasure of inviting you to join us for the 61st National Prayer Breakfast, which will be held on Thursday, February 7, 2013, at 7:30 a.m. at the Washington Hilton in Washington, D.C.

Annually, Members of Congress, the President of the United States, and other national leaders gather to reaffirm our trust in God and recognize the reconciling power of prayer. Friends and leaders throughout the United States and from more than 140 countries come in the spirit of friendship to set aside differences and seek to build and strengthen relationships through our love for God and care for one another. Although we face tremendous challenges each day, our hearts can be strengthened both individually and collectively as we seek God's wisdom and guidance together.

Your prompt response is essential and greatly appreciated. We hope you will be able to join us for this special occasion.

Sincerely,

Jeff Sessions

Mark Pryor

NPB 5

*Members of the Congress
of the United States of America
request the pleasure of your company at the*

*61st Annual
National Prayer Breakfast
with*

*The President of the United States
and other national leaders in the Executive,
Judicial and Legislative Branches
of our government*

*Thursday, February 7, 2013
at eight o'clock*

*Hilton Washington
International Ballroom
Washington, D.C.*

*Guests to be seated
by 7:30 a.m.*

*Adjournment
by 9:30 a.m.*

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March 12, 2013

The Honorable Gina McCarthy
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Assistant Administrator McCarthy:

As you are aware, the Senate Environment and Public Works Committee has been investigating the highly questionable tactics employed by former Environmental Protection Agency (EPA) Region 6 Administrator, Dr. Al Armendariz. Dr. Armendariz resigned his position in April 2012, soon after the public learned of his controversial statement that the "general philosophy" of EPA's enforcement policy should be to "crucify" oil and natural-gas companies.¹ At the time, the White House and EPA distanced themselves from Dr. Armendariz stating that "[Armendariz's] comments are inaccurate as a representation or characterization of the way the EPA has operated under President Obama."² Moreover, the President ran on a pledge to support an "all of the above" energy strategy – which deploys our abundant oil, gas, and coal resources.³ However, the Committee has recently obtained documents that demonstrate Dr. Armendariz was not a rogue actor, out of step with EPA leadership. Rather, evidence has emerged that indicates Dr. Armendariz's controversial tactics were, in fact, part of a broader effort at EPA to coerce the States and to constrain the domestic fossil fuel industry with layers of bureaucratic red tape and intimidation tactics.

The Committee has learned that prior to his resignation, Dr. Armendariz emailed senior-level EPA officials and outlined numerous EPA efforts during his tenure that were designed to restrain domestic fossil fuel production, as proof that his mission at EPA had been accomplished. Dr. Armendariz expressly highlights your new air regulations, as the "icing on the cake." The email stated the following:

Thanks Bob. But don't worry about me personally. Because of our collective work (rules, enforcement, science, *soft power*) we have dozens of states (including Texas) with brand new disclosure requirements for fracking fluid chemicals, new state rules specific to hydrofracking regulation, new state well cement/casing requirements, and more state resources to conduct air emission

¹ Amy Harder, *Sierra Club Hires EPA Official Felled by 'Crucify' Comments*, NATIONAL JOURNAL, Jun. 29, 2012, <http://www.nationaljournal.com/domesticpolicy/sierra-club-hires-epa-official-felled-by-crucify-comments-20120629>.

² Lesa Jansen & Todd Sperry, *EPA Official Resigns over 'Crucify' Remarks*, CNN, Apr. 30, 2012, <http://www.cnn.com/2012/04/30/us/epa-crucify>.

³ WhiteHouseOnline, *Obama on US Energy*, YOUTUBE, Mar. 9, 2012, <http://www.youtube.com/watch?v=hfKwJuaYpIM> at 05:30 min.

inspections. Add to that tighter federal rules for gulf-off shore NPDES discharges, GHG reporting for fugitive methane and engaging USGS and state geo surveys to take seismic activity seriously.

None of this would [have] happened had the 2008 election gone the other way. None.

We have set things in motion, including empowering and shaming the states, to clean up the oil/gas sector. Further progress is inevitable. I am extremely proud of the work that we have done collectively. Gina's new air rules will soon be the icing on the cake, on an issue I worked on years before my current job. (emphasis added).⁴

This email is alarming for a number of different reasons. In the first instance, it appears that there is a collective strategy at the EPA aimed at reining in domestic natural gas production. This strategy includes not just EPA's foiled attempts to punish natural gas producers⁵ but also includes an effort towards "shaming the states."⁶ EPA's actions against Range Resources have been highlighted as an example of Armendariz's overly zealous persecution of the oil and gas industry. The EPA issued an emergency order in 2010 accusing Range Resources of contaminating an aquifer west of Fort Worth and giving it 48 hours to provide clean drinking water to residents. At the time, Armendariz circumvented state regulators actively investigating the situation citing in the emergency order that EPA had "determined" that State and local authorities had not taken sufficient action. The order later was withdrawn after a state court ruled evidence that hydraulic fracturing had caused the contamination had been falsified.⁷ We now know that far from being Armendariz's pet project – the highest levels of EPA were aware of and endorsed his actions. In one email recently obtained by the Committee, Assistant Administrator Cynthia Giles sent the following email to her colleagues:

Just wanted to say how impressed I am at the terrific work the Region did on the Range order...and thanks to the HQ folks for supporting the region on this and getting this done as one EPA. Great job all!⁸

After EPA withdrew the order, both Giles and Bob Sussman, Senior Policy Counsel to the Administrator, sent Armendariz personal emails expressing their disappointment that EPA withdrew the order.⁹

Moreover, it appears that "Gina's new air rules," presumably the New Source Performance Standards for Electric Generating Units proposed on March 27, 2012, are part of a

⁴ Email from Al Armendariz, to Bob Sussman & Cynthia Giles (Mar. 30, 2012, 06:34 PM).

⁵ *U.S. v. Range Production Co.*, No. 3:11-CV-00116-F (N. D. Tex. Mar. 30, 2012).

⁶ *Supra* note 4.

⁷ Dina Cappiello, *Al Armendariz, EPA Official, Resigns Over 'Crucify' Comment*, THE HUFFINGTON POST, Apr. 30, 2012, http://www.huffingtonpost.com/2012/04/30/al-armendariz-epa-official-resigns_n_1464919.html.

⁸ Email from Cynthia Giles, to John Blevins, Suzanne Murray & David Gray (Dec. 8, 2010, 07:41 AM).

⁹ Email from Bob Sussman, to Al Armendariz, et al. (Mar. 30, 2012, 03:46 PM).

deliberate strategy to shut down new electricity generation.¹⁰ Dr. Armendariz proudly declared that the NSPS rules are “icing on the cake” and achieved a goal he had “worked on years before my current job.”¹¹ While it is not clear from the email, it appears that Dr. Armendariz was boasting about EPA’s decision to list petroleum coke (pet coke) in the definition of coal so pet coke-fired power plants would also be captured under the proposed NSPS rule. In addition to our concerns over the credibility of EPA’s decision to regulate pet-coke as coal in the proposal without substantial evidence or appropriate findings in the administrative record, the proposed NSPS rule, which was prompted by a 2011 settlement agreement¹² between several environmental groups – including the Sierra Club – and the EPA, effectively outlawed the construction of the Las Brisas Energy Center (LBEC) in Corpus Christi, Texas. Dr. Armendariz had previously worked for the Sierra Club in preparation for the public hearings against the LBEC. Thus, Dr. Armendariz’s reference to an “issue I worked on years before my current job” seemingly refers to his work for the Sierra Club on LBEC. Despite this obvious conflict-of-interest, documents obtained by the Committee reveal that you in fact exchanged emails with Dr. Armendariz on January 12, 2011, about the LBEC.¹³

We are also concerned that as Region 6 Administrator, Dr. Armendariz brought on two attorneys, Leyla Mansuri and Chrissy Mann, who previously litigated against the construction of electric generating units – specifically the LBEC.¹⁴ Prior to her appointment, Ms. Mansuri was an attorney with the Environmental Integrity Project, and represented the Sierra Club in its litigation against LBEC.¹⁵ Ms. Mann was also engaged in litigation against the LBEC in her role at the Office of Public Interest at TCEQ.¹⁶ It appears as if Dr. Armendariz commandeered the resources of the EPA to accomplish his goals of killing the LBEC, all with the consent and knowledge of EPA leadership.

As the President’s nominee to be Administrator, we require your immediate attention to the questions that have been raised by these documents. Failure to respond in a prompt and fully transparent fashion will leave a cloud of doubt over whether you intend to break with your predecessor and truly lead a transparent agency. Accordingly, I request that the EPA provide any and all records, electronic or otherwise, of meetings, conversations, e-mails, letters, or other communications or documents referring or relating to the LBEC, including, but not limited to, all communications between you, Dr. Armendariz or any other EPA officials concerning the LBEC. Please provide the requested documents and responses to the following questions no later than March 22, 2013.

¹⁰ See Standards for Performance For Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 Fed. Reg. 22,392 (Apr. 13, 2012).

¹¹ *Supra* note 4.

¹² See U.S. ENVTL. PROT. AGENCY, *Settlement Agreements to Address Greenhouse Gas Emissions from Electric Generating Units and Refineries – Fact Sheet*, <http://epa.gov/carbonpollutionstandard/pdfs/settlementfactsheet.pdf> (last accessed March 8, 2013).

¹³ Email from Gina McCarthy, to Al Armendariz & Janet McCabe (July 12, 2011, 09:11 PM).

¹⁴ APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 (Mar. 29, 2010) available at <http://www.soah.state.tx.us/pfdsearch/pdfs/582%5C09%5C582-09-2005-pfd1.pdf>.

¹⁵ *Id.*

¹⁶ APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 at 4 (Dec. 1, 2010) available at <http://web.caller.com/2010/pdf/1201lasbrisas.pdf>.

1. As you are aware, Dr. Armendariz previously served as an expert witness for the Sierra Club in a proceeding against the LBEC.¹⁷ While this presents a clear conflict-of-interest, he was permitted to work on EPA's permitting decisions related to LBEC and actively engaged EPA leadership on this issue.
 - a. Please explain why he was allowed, at any time during his tenure, to work on matters relating to the LBEC.
 - b. Please list all entities in which Dr. Armendariz had an identified conflict-of-interest.
 - c. What are EPA's criteria for identifying a conflict-of-interest?
 - d. After a conflict-of-interest was identified, how was Dr. Armendariz screened from working on covered projects?
2. While Dr. Armendariz has resigned his position from EPA, Leyla Mansuri and Chrissy Mann are still employed by Region 6. Both of these individuals represented entities opposed to the construction and permitting of the LBEC.
 - a. Has EPA identified conflict-of-interest for either Ms. Mansuri or Ms. Mann? Please list all topics in which EPA has identified a conflict-of-interest.
 - b. Has either Ms. Mansuri or Ms. Mann worked on any matter related to the LBEC?
 - c. Has either Ms. Mansuri or Ms. Mann worked on the development of the NSPS rule for greenhouse gases for new power plants Electric Generating Units?
3. On July 12, 2011, Dr. Armendariz sent you and your Deputy Administrator, Janet McCabe, an email stating the following: *"I am looking forward to seeing Janet tomorrow to talk about a couple of air issues. On last Friday last week I received guidance from OGC ethics office that I have been in the agency long enough that my "cooling off period" has lapsed on working on matters that I had previously worked on before joining the agency."*¹⁸ The next ten paragraphs are redacted. Your response to this email – sent at 9:11pm on the same date is also redacted.
 - a. Please provide the Committee with an unredacted version of both emails.
 - b. Did you or Janet McCabe ever discuss the LBEC with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? If so, characterize the nature of the conversation and provide the Committee with all such communications.
 - c. Did you or Janet McCabe ever discuss the NSPS for Electric Generating Units rule with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? Please provide the Committee with all such communications referring or relating to these conversations.
4. What is your interpretation of Dr. Armendariz's comment that your "air rules" were "icing on the cake"?

¹⁷ Denise Malan, *EPA Appointment Could Affect Las Brisas Hearing*, CALLER.COM, Nov. 5, 2009, <http://www.caller.com/news/2009/nov/05/epa-appointment-could-affect-las-brisas-hearing/?print=1>.

¹⁸ Email from Al Armendariz, to Gina McCarthy & Janet McCabe (July 12, 2011, 07:22 PM).

Ms. Gina McCarthy
March 12, 2013
Page 5 of 5

Thank you for your prompt attention to this matter. If you have any questions, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and Public Works

James Inhofe
United States Senator

Roger Wicker
United States Senate

Jeff Sessions
United States Senator

John Boozman
United States Senator

14-000-1911



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 2 2013

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Jeff Sessions
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

I am writing to inform you of the availability of the draft of the U.S. Environmental Protection Agency's (EPA) *FY 2014-2018 Strategic Plan*, which supports the four-year update required by the Government Performance and Results Act (GPRA) Modernization Act of 2010 (Public Law 11-352). The agency's *Strategic Plan* identifies measurable environmental and human health outcomes the agency expects to achieve over the next four years. This draft plan updates the previous plan by making targeted revisions that seek to strengthen the agency's partnerships, and convey how the EPA will do business more effectively and efficiently to advance environmental and human health protection.

We are making the draft plan available in accordance with the requirements of the GPRA Modernization Act. Pursuant to the requirements of that Act, the draft plan is additionally being made available for public comment through January 3, 2014.

We will consider feedback we receive during the comment process as we prepare the final *FY 2014-2018 EPA Strategic Plan* for anticipated release in February/March 2014. For your convenience, the draft of the plan is accessible through <http://www2.epa.gov/planandbudget/strategicplan>.

If you have any questions or concerns or wish to obtain a hard copy of the draft plan, please contact me or have your staff contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

A handwritten signature in cursive script, reading "Maryann Froehlich", is positioned above the typed name.

Maryann Froehlich
Acting Chief Financial Officer

14-000-8047

United States Senate

WASHINGTON, DC 20510

April 10, 2014

The Honorable Tom Vilsack
US Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20010

The Honorable Ernest Moniz
US Department of Energy
100 Independence Ave., S.W.
Washington, D.C. 20585

The Honorable Gina McCarthy
US Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Secretary Vilsack, Secretary Moniz, and Administrator McCarthy:

We are writing today in regards to the president's plan released on March 28, 2014, to reduce methane emissions. In particular, we are concerned about potential actions against the agriculture community to regulate methane and other greenhouse gas (GHG) emissions, which could severely impact the livestock industry.

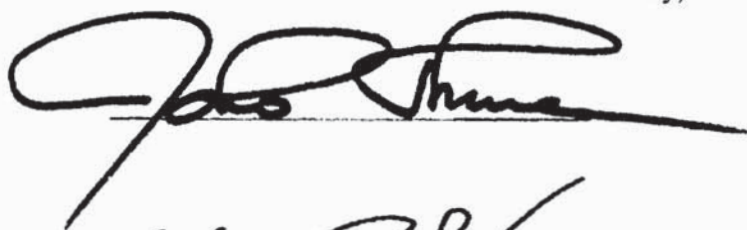
The president's Climate Action Plan "Strategy to Reduce Methane Emissions" targeted a number of industries for methane emission reductions, including agriculture. Specifically the plan calls on the U.S. Department of Agriculture (USDA), Environmental Protection Agency (EPA), and Department of Energy (DOE) to outline a "Biogas Roadmap" to reduce dairy sector GHG emissions by 25 percent by 2020 through voluntary strategies.

Federal regulations of GHGs in the agriculture sector would have detrimental implications on livestock operations across the country. In 2008, as part of its Advanced Notice of Proposed Rulemaking to regulate GHGs under the Clean Air Act, the EPA deliberated regulating agriculture-related emissions, which would have required farmers to purchase expensive permits. It was estimated that these top-down regulations would have cost medium-sized dairy farms with 75 to 125 cows between \$13,000 and \$22,000 a year, and medium-sized cattle farms with 200 to 300 cows between \$17,000 and \$27,000. We reject the notion that the EPA should, absent express authorization from Congress, seek to regulate the agriculture sector in this manner.

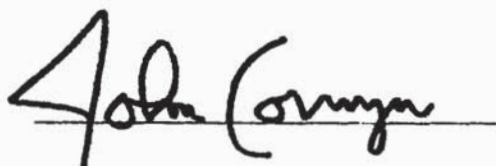
The agriculture community is committed to environmental stewardship, which is evidenced by the 11 percent reduction in agriculture-related methane emissions since 1990. It is our hope that the EPA, USDA, and DOE will work with Congress and the agriculture industry to outline voluntary measures that can be taken to reduce emissions without imposing heavy-handed regulations on farms across America. We respectfully request that you commit in writing to refrain from proposing new regulations, guidelines, or other mandatory requirements on methane or other GHGs from the agriculture industry.

Thank you for your consideration and attention to this matter.

Sincerely,



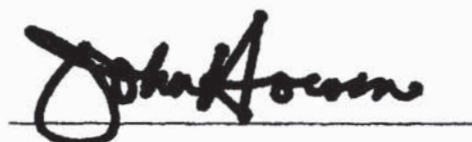


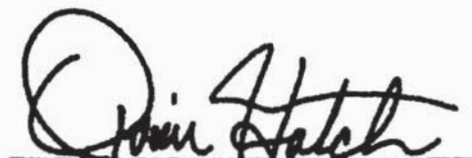










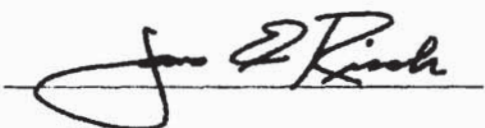


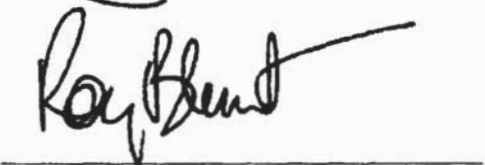


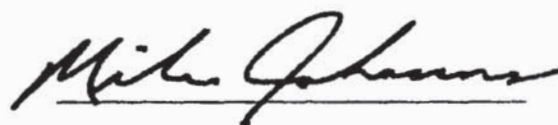
















May 2, 2014

The Honorable John Thune
United States Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510-4105

Dear Senator Thune:

Thank you for the letter, cosigned by your colleagues, and the opportunity to engage with you on the Strategy to Reduce Methane Emissions. As outlined in the document, **"This strategy addresses emissions from agriculture exclusively through voluntary actions, not through regulations."**

Voluntary, partnership-based approaches to address emissions from agricultural sources have been shown to be effective, which is why the approaches for agriculture expand efforts to optimize and deploy waste-to-energy technologies and enhance manure management. Wider deployment of biogas systems and other technologies that capture methane for renewable heat, power, fuel, and chemicals can help methane producers, including the agriculture sector, realize triple-bottom-line benefits for the community, the environment, and profitability of the operation; a win, win, win.

The Strategy reflects a strong public-private partnership with the dairy industry focused on accelerating deployment of cost-effective technologies which reduce emissions across the supply chain through innovative research, as well as technical and financial assistance. Along with enhanced manure management practices, which continue a long tradition of environmental stewardship in the agriculture sector, biogas systems allow dairy producers to tap into a \$3 billion annual market potential with farm-based energy production and additional marketable co-products, such as nutrient separation and recovery. Those benefits are why the National Milk Producers Federation, representing 32,000 dairy farmers, applauded the release and the action set forth in the Methane Strategy.¹

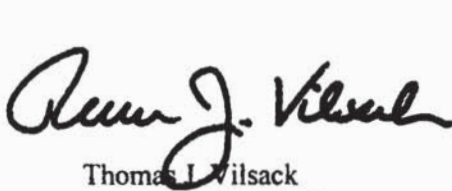
The Department of Agriculture, Environmental Protection Agency, and Department of Energy (DOE), through voluntary programs, like AgSTAR and our collaborative efforts with the dairy industry to develop a Biogas Roadmap, are poised to work with the agricultural community to reduce greenhouse gas emissions. In addition, with the recent passage of the Agriculture Act of 2014, we have additional tools to continue supporting construction of biogas utilization projects, where appropriate. The DOE also continues to fund projects to research, develop and demonstrate these technologies.

¹ <http://www.nmpf.org/latest-news/press-releases/mar-2014/dairy-industry-applauds-white-house-strategy-methane-emissions>.

The Honorable John Thune
Page 2

Again, thank you for your letter. We appreciate the opportunity to respond to your questions on the Strategy to Reduce Methane Emissions. An identical letter has been sent to your colleagues.

Sincerely,



Thomas I. Wilsack
Secretary of Agriculture



Gina McCarthy
Administrator of the
Environmental Protection
Agency



Ernest J. Moniz
Secretary of Energy

United States Senate

WASHINGTON, DC 20510

March 31, 2014

The Honorable Thomas E. Perez, Secretary of Labor, Co-Chair
The Honorable Jeh Johnson, Secretary of Homeland Security, Co-Chair
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency, Co-Chair
Interagency Working Group on Improving Chemical Facility Safety and Security
OSHA Docket Office
Docket No. OSHA-2013-0026
Technical Data Center
Room N-2625, OSHA
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

To the Interagency Working Group on Improving Chemical Facility Safety and Security:

We are contacting you to express concern about the potential regulation of ammonium nitrate (AN) under the Environmental Protection Agency's (EPA) Risk Management Program (RMP). Nearly 75% of the AN consumed in the United States is used in the manufacture of explosives, and AN accounts for about 90% of all explosives by weight. There is no viable substitute for AN in the explosives industry, and without explosives mining, quarrying and other essential industries could not function.

As part of its work in implementing Executive Order (EO) 13650, the Interagency Working Group (IWG) is tasked with developing options to improve the safety and security of our nation's chemical facilities. The EO has its roots in the tragic accidental detonation of AN in West, TX, and the IWG is specifically charged (among other things), to identify ways in which the safety of AN management and storage can be enhanced under existing regulatory and policy authorities.

Pursuant to Section 6(a) of the EO, the IWG recently released a Solicitation of Public Input describing the various safety and security options it is considering. One such option is the possible expansion of the RMP to include AN. We urge you to reject this option. A more direct, relevant, and effective means of ensuring the safe handling of AN is already extant in regulations administered by the Occupational Safety & Health Administration (OSHA) at 29 CFR 1910.109(i). In addition, regulations of the Mine Safety and Health Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of Homeland Security have proven effective to ensure safety at mine sites. These rules adequately address the risks posed by AN.

At the Senate Environment and Public Works Committee's June 27, 2013 hearing on the West, TX tragedy, Rafael Moure-Eraso, Chairman of the Chemical Safety & Hazard Investigation

Page Two

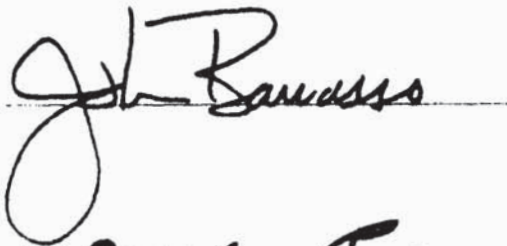
Board recommended that AN be added to EPA's RMP list. At that time, Chairman Moure-Eraso was asked whether he was aware of any accidental detonations of AN where OSHA's regulations had been followed. He replied that he was not aware of any. Following his testimony, Dr. Sam Mannan, of the Mary Kay O'Connor Process Safety Center at Texas A&M, testified that compliance with OSHA's AN regulations could have prevented or mitigated the incident.

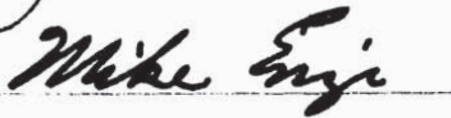
OSHA has demonstrated its commitment to enforcing its AN standard. On October 9, 2013, OSHA issued 24 citations to the owner of the West Fertilizer facility. Eight of those citations concerned violations of the agency's AN rules, including the failure to properly store AN by not eliminating sources of combustible materials, installing necessary fire walls, and limiting bulk quantities of the material. The facility was also cited for not providing proper ventilation or fire suppression in the event of a fire.

We appreciate the serious and important task the IWG has been given in implementing the EO. The safety and security of our nation's chemical facilities, our workers, and our communities is vital. In that regard, we urge you to recommend that OSHA's existing AN standard be bolstered to address the issues presented by the West, TX tragedy, and that efforts be made to increase awareness and enforcement of its requirements. Imposing additional regulatory burdens on compliant facilities by including AN in the RMP will do nothing to protect workers and the public from companies that, either through ignorance or intransigence, avoid compliance with the nation's safety rules.

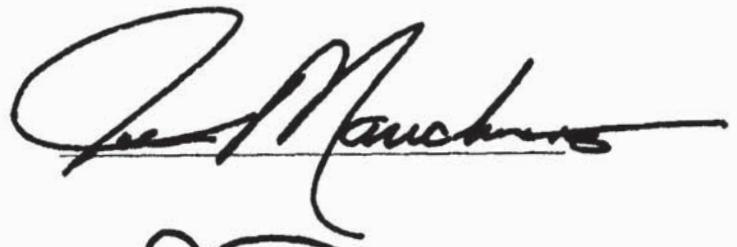
We look forward to reviewing the IWG's final recommendations.

Sincerely,





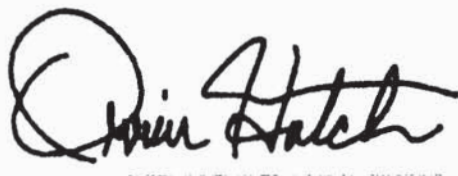








Page Three

A handwritten signature in black ink, appearing to read "Quinn Hatch". The signature is written in a cursive style with a large, circular initial "Q".

Cc: The Honorable Eric H. Holder, Jr., Attorney General
Cc: The Honorable Thomas J. Vilsack, Secretary of Agriculture
Cc: The Honorable Anthony Foxx, Secretary of Transportation



MAY 22 2014

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

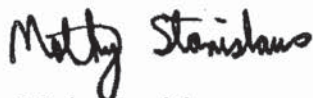
Thank you for your March 31, 2014, letter expressing concern about the potential regulation of ammonium nitrate under the United States Environmental Protection Agency's (EPA's) Risk Management Program. We share your view on the importance of protecting our nation's chemical facilities, workers, first responders, and communities from the devastating results of chemical accidents.

Under the Executive Order (EO) 13650 for Improving Chemical Facility Safety and Security, the Working Group and its interagency partners are exploring options for enhancing ammonium nitrate safety and security. Findings and recommendations identified by the Working Group will be addressed in the status report to the President at the end of May.

As you noted in your letter, pursuant to Section 6(a) of EO 13650, earlier this year, the Working Group released a Solicitation of Public Input, which described various options for chemical facility safety and security policy, regulation, and standard modernization. The public comment period closed on March 31, 2014, and we are currently reviewing the comments. The Working Group will use the information received through stakeholder outreach (i.e., the Solicitation of Public Input, public listening sessions, and stakeholder meetings) and an analysis of potential gaps in regulations, standards, guidance, and policy in order to determine the next steps. We will also be reviewing comments on the Occupational Safety and Health Administration's (OSHA) Request for Information (comment period closed March 31, 2014) that sought public input on updating the Process Safety Management standard.

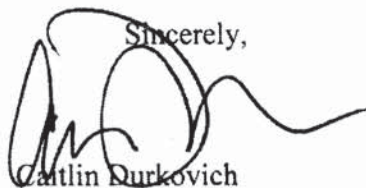
In the coming months, EPA plans to issue a Request for Information seeking public input on the best way to address issues such as what grades, forms, or quantities of ammonium nitrate, and what industrial sectors may need additional regulation or guidance. The Request for Information will also seek stakeholder input on any potential overlaps or conflicts with ammonium nitrate regulations of other agencies. EPA will also be seeking public input on how best to address other explosive or reactive hazards. Throughout this effort, EPA will coordinate with OSHA and the Department of Homeland Security.

Again, thank you for your letter regarding the safe storage, handling, and sale of ammonium nitrate in EPA's Risk Management Program. The Working Group can provide further details on the issues addressed under the EO after transmitting the status report to the President.



Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and
Emergency Response
Environmental Protection
Agency

Sincerely,



Caitlin Durkovich
Assistant Secretary
Office of Infrastructure Protection
National Protection and Programs
Directorate
Department of Homeland Security



David Michaels, PhD, MPH
Assistant Secretary for
Occupational Safety and
Health Administration
Department of Labor

14-001-4924

United States Senate

WASHINGTON, DC 20510

September 11, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We are writing to request that the Environmental Protection Agency (EPA) provide a 60 day extension of the comment period for the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units." While we appreciate EPA granting an initial 120 day comment period, the complexity and magnitude of the proposed rule necessitates an extension. This extension is critical to ensure that state regulatory agencies and other stakeholders have adequate time to fully analyze and comment on the proposal. It is also important to note that the challenge is not only one of commenting on the complexity and sweeping scope of the rule, but also providing an opportunity to digest more than 600 supporting documents released by EPA in support of this proposal.

The proposed rule regulates or affects the generation, transmission, and use of electricity in every corner of this country. States and stakeholders must have time to fully analyze and assess the sweeping impacts that the proposal will have on our nation's energy system, including dispatch of generation and end-use energy efficiency. In light of the broad energy impacts of the proposed rule, state environmental agencies must coordinate their comments across multiple state agencies and stakeholders, including public utility commissions, regional transmission organizations, and transmission and reliability experts, just to name a few. The proposed rule requires a thorough evaluation of intra- and inter-state, regional, and in some cases international energy generation and transmission so that states and utilities can provide the most detailed assessments on how to meet the targets while maintaining reliability in the grid. This level of coordination to comment on an EPA rule is unprecedented, extraordinary, and extremely time consuming.

It is also important to note that the proposed rule imposes a heavy burden on the states during the rulemaking process. If the states want to adjust their statewide emission rate target assigned to them by EPA, they must provide their supporting documentation for the adjustment during the comment period. The EPA proposal provides no mechanism for adjusting the state emission rate targets once they are adopted based on the four building blocks. So the states need enough time to digest the rule, fully understand it, and then collect the data and justification on why their specific target may need to be adjusted, and why the assumptions of the building blocks may not apply to their states. This cannot be adequately accomplished in only 120 days.

Thank you for your consideration of this request.

Sincerely,





Lee Richardson

Mike McConnell

Dan Allen

Joe Donnelly

William J. E.

Tom Allen

Jim Johnson

Pat Roberts

John Conyn

John Bozeman

John H. Boucarh

748

Mary J. Gansin

Tr / L

Mark R. Womers

MARK ROYCE

Paul Marchese

Chuck Grassley

Walter Hatch

Clara Kim

Roy Johnson

Lydia Winter

Anna Anderson

Mike Cryo

Dan Cook

Joe E. Kirsch

Mike Johnson
Sally Chaudhri

Michael B. Eij

Jerry Moran

Jeffrey

James M. White

John M. L.
M. R.

James

Tom Cohen

Mark G. B. G.
Ken Hill

Rob Parton

John B. B. B.

John B. B.

John B. B.

Richard H. H.

Rob B.

Ray B.

Rand Paul

Jim S.

Larry H.

Rob B.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 16, 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of September 11, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy requesting an extension of the comment period for the proposed Clean Power Plan, which was signed on June 2, 2014, and published in the Federal Register on June 18, 2014. The Administrator asked that I respond on her behalf.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, to learn more about what programs are already working to reduce carbon pollution. In addition, during the week of July 29, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings.

These hearings and these meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse and interconnected.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.

- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

August 1, 2014

The Honorable Barack H. Obama
President
The White House
1600 Pennsylvania Ave. NW
Washington DC 20500

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC 20460

Mr. President and Administrator McCarthy:

Last month, the U.S. Environmental Protection Agency (EPA) announced sweeping new regulations under Section 111(d) of the Clean Air Act in a purported effort to reduce emissions of carbon dioxide (CO₂) from existing power plants.¹

While we appreciate the EPA's willingness to hold public hearings on this proposal in four locations (Atlanta, Georgia; Denver, Colorado; Washington, DC; and Pittsburgh, Pennsylvania) from July 29 through August 1, 2014, we are writing to urge the Administration to carefully consider the comments and concerns that were presented at the Atlanta public hearing by Alabamians from all parts of the user spectrum—workers, small business owners, elected officials, civic leaders, farmers, homemakers, and others. Our constituents presented Administration officials with a wide range of legitimate concerns. For example, officials heard compelling arguments explaining why the witnesses believe the EPA's proposal is based on a flawed interpretation of Section 111(d) of the Clean Air Act. As the EPA's proposal even acknowledges, the EPA has never used this provision of the Act in the manner now proposed—a reality that makes relevant the U.S. Supreme Court's recent admonishment:

*"When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy' ... we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance."*²

It cannot be seriously argued that the action proposed by the EPA has been expressly authorized by Congress. Indeed, if brought to Congress for a vote now, the EPA's proposal would certainly not be approved.

The Administration's actions have already begun affecting Alabamians. Just this morning, Alabama Power cited federal regulations as the impetus behind its decision to alter operations at seven operating units located within three power plants across the state. As part of these transitions, two coal-fired units at the Green County Electric Generating Plant will be converted to gas-powered units,

¹ 79 Fed. Reg. 34,830 (June 18, 2014).

² *UARG v. EPA*, No. 12-1146, slip. op. at 19 (June 23, 2014).

reducing electric generating capacity by a third and eliminating sixty jobs located in the heart of the Black Belt. These job losses have serious consequences in a region which has faced declining populations, high unemployment rates, as well as a host of infrastructure challenges.

The EPA's proposal, if finalized, would impose enormous costs and burdens on Alabama workers and their families, and would hinder our global economic competitiveness. The impact will be felt the deepest in states—like ours—where fossil fuels provide a significant share of our electricity generation. The Administration's claims that energy costs will not be impacted by this proposal ring hollow. Simple economics suggest that the EPA's plan will undoubtedly increase electricity prices, which will hinder—not help—economic growth. Alabama has historically seen lower than average energy costs, in part because our state has been blessed with an abundance of natural resources that can be harnessed to power our homes and businesses and to make life better for our citizens.

Alabamians are also deeply troubled by the prospect that the EPA's proposal will further erode the primary role of the states in managing electricity generation and determining the mix of energy sources that work best for them in their specific circumstances. In Alabama, our electricity is generated from a range of sources—nuclear, coal, natural gas, hydropower and renewables. Those decisions should not be dictated by EPA officials in Washington, D.C. Perhaps ironically, the EPA's chosen formula for establishing CO₂ emission reduction targets disadvantages states with nuclear power, which is the nation's most significant source of emission-free electric generation.

Moreover, Alabamians expressed to Agency officials their beliefs that the EPA gave activist environmental groups a special role in crafting this proposal. In fact, in an article entitled "Environmentalists Drew Emissions Blueprint," the New York Times recently reported³ that the EPA's Section 111(d) proposal is a "remarkable victory for the Natural Resources Defense Council"—an activist environmental organization with known anti-coal and anti-nuclear viewpoints. The article explains that the EPA "used as its blueprint the work of" this outside group. Indeed, a review of recent NRDC proposals for regulating CO₂ emissions from power plants closely resembles the proposal issued by EPA. These are just a few examples of the myriad of concerns—legal, technical, environmental, and economic—that have been raised in recent weeks in response to the EPA's proposal.

In light of the foregoing, we urge the Administration to listen closely to those who came from our great state to discuss the adverse consequences of these recent policies and proposals on their families, their jobs, and their communities.

Sincerely,



Senator Richard Shelby


Senator Jeff Sessions

³ http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r=0



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 25 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of August 1, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Clean Power Plan for Existing Power Plants that was signed by the Administrator on June 2, 2014, and published in the *Federal Register* on June 18, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, including several from Alabama, to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

In your letter, you requested that the EPA hold additional public hearings on this rule, including one in Alabama. During the week of July 29th, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings. The public comment period remains open and all comments submitted, regardless of method of submittal, will receive the same consideration.

We appreciate you and your constituents' views about the effects of the proposal. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

16-001-2440

JAMES M. INHOFF, OKLAHOMA, CHAIRMAN

DAVE CLITTER, LOUISIANA
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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
DETTINA FORBES, DEMOCRATIC STAFF DIRECTOR

September 7, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

Given the impending presidential transition, it is imperative that Congress and the American public have a clear understanding of the ongoing litigation and the regulatory and administrative actions that may be underway or planned by the U.S. Environmental Protection Agency (EPA or Agency). However, much of this important information is not publicly or readily available. Such a lack of transparency about EPA activities is especially concerning in light of the transparency commitments you made in 2013 to members of the U.S. Senate Committee on Environment and Public Works (EPW or the Committee) during the Senate's consideration of your nomination to serve as EPA Administrator. A recent review by the Committee's majority staff of the EPA website and publications suggests the EPA under your leadership has fallen short of these promises.

At the outset, we note that EPA's website does not provide any listing of ongoing litigation involving the Agency. As you are aware, during the process to confirm you as Administrator of the EPA in 2013, concerns were raised about the lack of transparency surrounding EPA's "sue-and-settle" agreements with environmental activist groups that were driving much of EPA's regulatory activities. As a result, you pledged to undertake several measures to increase transparency surrounding EPA's closed-door litigation settlements and rulemaking activities.¹ While EPA has made some litigation- and rulemaking-related information publicly available on its website pursuant to these commitments, the Agency has failed to ensure such information is current and accurate.

For example, you provided assurances that EPA would post to its website copies of the petitions received since January 1, 2013, to issue, amend, or repeal an EPA rule per the Administrative Procedure Act or to take specific rulemaking action per the various environmental laws EPA implements.² Although EPA launched this webpage in response to your commitment, according to a recent review, it appears that EPA may no longer be posting

¹ <https://www.vitter.senate.gov/newsroom/press/vitter-cpw-republicans-get-major-agreements-from-epa-on-5-transparency-requests>.

² <https://www.epa.gov/aboutepa/petitions-rulemaking>.

accurate and up-to-date information about rulemaking petitions it has received. EPA has posted to this website only 13 rulemaking petitions received since January 1, 2013. Of this number, six petitions were for rulemakings under the Clean Air Act, the most recent of which was from April 21, 2014.³ In fact, the webpage listing the petitions for rulemakings under the Clean Air Act states, “[a]dditional petitions will be added on an ongoing basis;”⁴ yet, the same webpage adds it was last updated on May 30, 2014 – more than two years ago. Similarly, the other petitions EPA has posted online may not be current, as the most recent petition listed on the entire webpage is a January 23, 2015, petition to add a chemical to the Toxic Release Inventory.⁵

It strains the Agency’s credibility to suggest EPA has received only 13 rulemaking petitions since 2013 and none in the last year and a half. Indeed, a cursory review of news articles indicates EPA has continued to receive numerous petitions for rulemaking, including one filed in July 2016 to force EPA to issue a rule to reduce NOx emissions from heavy-duty trucks.⁶ It is unclear if EPA under your leadership has intentionally abandoned this transparency initiative or if the webpage is a victim of neglect.

As part of another transparency initiative, you agreed to maintain a webpage listing the notices EPA receives that indicate a member of the public intends to file a lawsuit against EPA if the Agency does not take a particular action, such as acting on a rulemaking petition or performing a non-discretionary duty, within a specified time frame, usually 60 days.⁷ In filing the required notice of intent (NOI) to sue, a person provides EPA a final opportunity to take administrative action to avoid a lawsuit, but in reality the NOI is often an invitation to enter a “sue-and-settle” agreement that will bind EPA to take the regulatory action by a specified date. Prior to 2013, EPA did not disclose to the public when it had received an NOI. As such, interested stakeholders, including states, were not always aware of potential settlement negotiations until a deal had been reached and dates for future EPA actions were announced.⁸ Even more, copies of settlement agreements are not available on a centralized EPA webpage.⁹

Currently, EPA’s NOI webpage shows that more than 100 NOIs have been received since January 1, 2013, many of which have resulted in lawsuits. However, based on a comparison of the NOI webpage to recent news articles and the Federal Register, it appears the webpage listing NOI information also is not current and complete, similar to EPA’s webpage for rulemaking petitions. A number of environmental groups filed an NOI with EPA on August 26, 2015, indicating their intent to file a lawsuit if EPA did not agree to update regulations for oil and gas sector under Subtitle D of the Resource Conservation and Recovery Act (RCRA);¹⁰ this NOI

³ <https://www.epa.gov/aboutepa/petitions-office-air-and-radiation>.

⁴ Id.

⁵ <https://www.epa.gov/aboutepa/petitions-office-environmental-information>.

⁶ See e.g., <http://insideepa.com/daily-news/agencies-petition-epa-align-heavy-duty-ghg-rule-strict-new-nox-limit>.

⁷ <https://www.epa.gov/noi>.

⁸ Under Section 113(g) of the Clean Air Act, for example, EPA must publish proposed settlement agreements in the Federal Register and take public comment on the proposed agreement for at least 30 days.

⁹ In a December 15, 2014, report about the impact of deadline suits on EPA’s rulemaking activities, the Government Accountability Office found neither EPA nor DOJ maintains a centralized database that links settlement agreements to rulemaking actions. See, <http://www.gao.gov/assets/670/667533.pdf>, at 2.

¹⁰ <http://environmentalintegrity.org/wp-content/uploads/2015-08-26-OG-Wastes-RCRA-Notice-Letter-FINAL.pdf>

does not appear on the webpage. The environmental groups subsequently filed a lawsuit on May 4, 2016, to require EPA to review and update as necessary the RCRA oil and gas rules; yet, a copy of this lawsuit also is not posted on EPA's NOI website. In fact, the NOI website almost exclusively shows matters involving the Clean Air Act and the Clean Water Act, but no actions under RCRA are included. EPA's overall poor maintenance of the NOI webpage is unacceptable.

In addition to EPA's incomplete public information about its litigation activities, the Committee is equally concerned by the lack of transparency throughout EPA's rulemaking process, especially at a time of administration transition. A transparent account of ongoing and planned regulatory actions is important not just for the incoming administration, but also for potentially impacted state, local, and tribal officials, job creators, and members of the public. Absent adequate lead-time on EPA regulatory actions, impacted parties are left with uncertainty that can halt capital investments and job growth, displace scarce government resources, and mitigate meaningful environmental benefits. For these reasons, federal agencies are required to submit regulatory agendas of active and anticipated actions to the Office of Management and Budget (OMB) to be published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda).¹¹

Publication of the semiannual Unified Agenda should be a centerpiece of any administration's efforts to inform the American public about upcoming regulatory activities, particularly during a period of transition. However, the Obama Administration has a record of not treating the Unified Agenda in such high regard. As you may recall, the Obama Administration – in an unprecedented move – failed to issue a Unified Agenda in the spring of 2012 when the President's reelection campaign was in full swing. In fact, only after the president's reelection had been secured did the Obama Administration publish a single Unified Agenda in December 21, 2012. Despite numerous requests from Congress, including this Committee,¹² the Administration has yet to provide a justification for keeping the public in the dark on its regulatory plans during an election year.

Based on a review of recent EPA action as compared to the most recent Unified Agenda, the Committee has reason to believe the Administration once again may be shielding its regulatory plans from the public conveniently during an election year. Although the Obama Administration released the 2016 Spring Unified Agenda for all federal agencies in May, EPA's regulatory agenda is already out-of-date, does not present an accurate projection of upcoming regulatory actions, and in some cases is outright misleading. For example, EPA has made conflicting public statements about its work on the Clean Energy Incentive Program (CEIP) proposed rule regarding implementation of the so-called Clean Power Plan (CPP). Critically, neither the spring nor the fall 2015 editions of the Unified Agenda identified the CEIP as an upcoming rule. Accordingly, it was unexpected when EPA's January 2016 Action Initiation List (AIL), which identifies newly commenced rulemakings on a monthly basis, first listed the

¹¹ http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_About.jsp

¹² <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=682B2ED7-DE0B-5D7C-E1C1-4C1ADB43B59F>

CEIP.¹³ While the AIL indicates EPA commenced work on the CEIP in January, EPA's Regulatory Development and Retrospective Review Tracker (RegDaRRT) website states the Agency actually initiated work on the CEIP on December 24, 2015 – Christmas Eve.¹⁴ As part of the January 2016 AIL, EPA initially indicated it would take “12 months or less” for EPA to complete the CEIP proposal.¹⁵ Notably, EPA's AIL website also appears outdated as it does not list any regulatory actions being initiated since May 2016.¹⁶

The U.S. Supreme Court issued an unprecedented decision to stay implementation of the CPP on February 9, 2016.¹⁷ Despite numerous legal and Congressional questions over EPA's authority to continue work on the CEIP given the stay of the CPP, EPA has continued work on the CEIP proposal, submitting it to OMB on April 26, 2016. However, when the spring 2016 Unified Agenda was released on May 18, 2016,¹⁸ EPA listed the CEIP proposal as a “long-term action” and said its publication date was “to be determined.”¹⁹ According to OMB, a “long-term action” in the Unified Agenda is an action “under development but for which [EPA] does not expect to have regulatory action within the 12 months after publication of this edition of the Unified Agenda.”²⁰ The Unified Agenda was published in the Federal Register on June 9, 2016.²¹ However, EPA's agenda describes “long-term actions” as “rulemakings for which the next scheduled regulatory action is after April 2017.”²²

Despite these statements in the Unified Agenda about no immediate plans to issue the CEIP, OMB concluded review of the CEIP proposal on June 16, 2016. You immediately signed the proposed rule, and a pre-publication version was released on EPA's website that day. It is unclear why EPA would suggest in the Unified Agenda that it had no immediate plans or specific timeframe to issue the proposed CEIP rule, when it now appears EPA's true intention has been to rush to issue a final CEIP rule by the end of this Administration regardless of the Supreme Court's stay of the CPP itself.²³ More importantly, EPA's inconsistent and overall haphazard

¹³ <https://www.regulations.gov/document?D=EPA-HQ-OA-2008-0265-0089>.

¹⁴ <https://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2060-AS84>.

¹⁵ <https://www.regulations.gov/document?D=EPA-HQ-OA-2008-0265-0089>.

¹⁶ <https://www.epa.gov/laws-regulations/actions-initiated-month>

¹⁷ https://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf.

¹⁸ The Spring 2016 Unified Agenda was released online on May 18, 2016. <http://www.reginfo.gov/public/>. The Administrator of the OMB's Office of Information and Regulatory Affairs (OIRA) sent a data call for regulatory agendas to agencies on February 19, 2016. At that time, OIRA requested agencies submit their agenda by March 18, 2016. Available at:

https://www.whitehouse.gov/sites/default/files/omb/infoereg/memos/2016/data_call_spring_2016_regulatory_agenda.pdf.

¹⁹ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=2060-AS84>.

²⁰ http://www.reginfo.gov/public/do/eAgendaHistory?operation=OPERATION_GET_PUBLICATION&showStage=longterm¤tPubId=201604.

²¹ <https://www.federalregister.gov/articles/2016/06/09/2016-12869/introduction-to-the-unified-agenda-of-federal-regulatory-and-deregulatory-actions>

²² <https://www.gpo.gov/fdsys/pkg/FR-2016-06-09/pdf/2016-12921.pdf>.

²³ When EPA first submitted the draft CEIP proposal to OMB for review, the draft initially would have provided a mere 45 days for the public to comment. In the interagency review process, OMB questioned the short public comment period, stating in comments to EPA, “[i]t is unclear why EPA would only provide 45 days for such a complex topic,” and advising a 90-day comment period was preferable. See,

schedule surrounding its work on the CEIP undercuts the transparency and public participation requirements of the federal rulemaking process.

EPA has also made conflicting statements and provided confusing information to the public about its plans for issuing the final Federal Plan for Regulating Greenhouse Gases from Electric Utility Units under the CPP (Model Trading Rules), which EPA also is continuing despite the Supreme Court's stay of the CPP. EPA issued the proposed Model Trading Rules in October 2015. In the spring 2015²⁴ and fall 2015²⁵ editions of the Unified Agenda, EPA indicated that it planned to issue the final Model Trading Rules in August 2016. EPA's spring 2016 Unified Agenda switched the timeframe for issuing the final Model Trading Rules to a "long-term" action and the date for issuing the final rule to "to be determined,"²⁶ meaning the final rule would not be issued before spring 2017. However, EPA's RegDaRRT webpage for the Model Trading Rules was updated on August 15, 2016, to list December 2016 as the projected timeframe for issuing the final rule.²⁷ Even with the new projected date, any plan to issue the final rule during the Obama Administration is inconsistent with how the rule is currently classified in the Unified Agenda.

In both the case of the CEIP and the Model Trading Rules, it is unclear whether the AIL, the RegDaRRT website, or the Unified Agenda information is accurate, and such inconsistencies raise questions about whether EPA is intentionally obfuscating its regulatory plans. Regardless, the facts set forth in this letter raise significant questions regarding EPA's credibility and the utility of the Unified Agenda and other public information about EPA's regulatory plans.

Given the concerns raised in this letter about EPA's lack of transparency surrounding its ongoing litigation and regulatory plans, it is requested that EPA provide the following information no later than close of business on September 21, 2016:

1. A complete list of all Agency actions that are currently underway as part of the Action Development Process, including:
 - a. title of the action;
 - b. tier of the action;
 - c. lead headquarters or regional program office;
 - d. RIN;

<https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0033-0040>. Notwithstanding OMB's feedback, the proposal that EPA issued and that was published in the Federal Register on June 30, 2016, gave the public only 60 days to provide comments. <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0033-0040>. In July 2016, EPA extended the public comment period by four days to September 2, 2016. See, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0033-0068>. In response to complaints that EPA's compressed timeframe has circumvented required consultations with states and tribes, EPA on August 25, 2016, agreed to extend the comment period an additional 60 days to close on November 1, 2016. See, https://www.epa.gov/sites/production/files/2016-08/documents/lr_notice_ceip_comm_peri_ext_8_25_16_w_disclaimer.pdf.

²⁴ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=2060-AS47>.

²⁵ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=2060-AS47>.

²⁶ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=2060-AS47>.

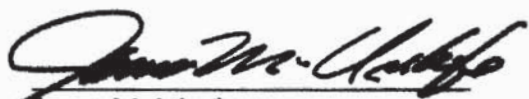
²⁷ <https://yosemite.epa.gov/oepi/RuleGate.nsf/byRIN/2060-AS47>

- e. date the action was initiated;
 - f. stage of the action, e.g., status of option selection, proposal, or final action;
 - g. any applicable statutory or judicial deadline for EPA action; and
 - h. whether the action is economically significant or otherwise expected to undergo interagency review pursuant to Executive Order 12866.
2. A complete list of all pending administrative or judicial litigation involving the Agency, including:
- a. the name of the plaintiff(s) and/or petitioner(s);
 - b. date filed;
 - c. summary of claim(s);
 - d. applicable statute(s);
 - e. applicable regulation(s);
 - f. judicial or administrative body hearing litigation;
 - g. relief being sought by plaintiff(s) and/or petitioner(s); and
 - h. status of settlement negotiations, including mediation or alternative dispute resolution proceedings.
3. A complete list of all petitions to issue, amend, or repeal a rule currently pending before the Agency, including:
- a. the name of the petitioner;
 - b. date filed;
 - c. summary of petition;
 - d. applicable statute(s); and
 - e. applicable regulation(s).
4. A complete list of all notices of intent (NOI) to file suit received by the Agency since January 1, 2016, including:
- a. the name of the individual or entity who submitted the NOI;
 - b. date filed;
 - c. summary of NOI;
 - d. applicable statute(s); and
 - e. status of NOI, e.g., whether the Agency has taken the action subject to the NOI, litigation has been filed for failure to act, or the Agency is engaged in settlement discussions or mediation to resolve the NOI or related litigation.
5. A complete list of the delegations of authority that have been issued, amended, or revoked since January 1, 2016.
6. Copies of all mass emails, guidance, briefings, or memoranda distributed to EPA staff concerning planning for the upcoming transition in administrations.

The Honorable Gina McCarthy
September 7, 2016
Page 7 of 7

We look forward to your prompt response. Please have your staff contact Byron Brown or Brittany Bolen of the Environment and Public Works Committee's majority staff at (202) 224-6176 if you have questions about this request.

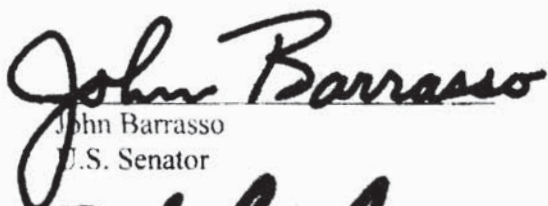
Sincerely,



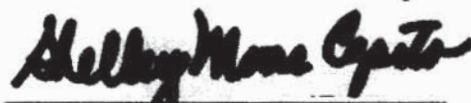
James M. Inhofe
Chairman



David Vitter
U.S. Senator



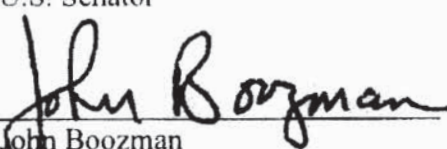
John Barrasso
U.S. Senator



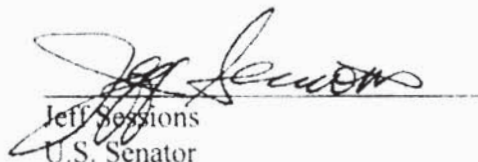
Shelley Moore Capito
U.S. Senator



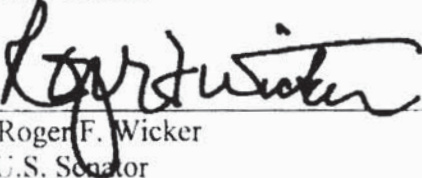
Mike Crapo
U.S. Senator



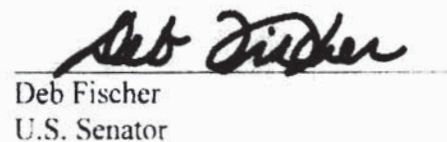
John Boozman
U.S. Senator



Jeff Sessions
U.S. Senator



Roger F. Wicker
U.S. Senator



Deb Fischer
U.S. Senator



M. Michael Rounds
U.S. Senator



Dan Sullivan
U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 06 2016

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of September 7, 2016, co-signed by many of your colleagues on the Committee, in which you request certain information concerning ongoing litigation involving the U.S. Environmental Protection Agency, as well as regulatory and administrative actions that may be underway or planned by the agency. Please share this response with your colleagues.

Enclosed with this letter is pertinent responsive information, prepared by appropriate program offices within the EPA. We hope this is helpful.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Tom Dickerson in my office at dickerson.tom@epa.gov or (202) 564-3638.

Sincerely,

A handwritten signature in black ink, which appears to read "Nichole Distefano", is positioned above the printed name.

Nichole Distefano
Associate Administrator

Enclosures

Enclosure

Your letter requests information about the EPA's regulatory agenda, and how that information is made available to the public. Every six months the EPA submits a regulatory agenda to OMB to be published as part of the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. The EPA's semiannual regulatory agenda contains descriptions of the EPA regulations that are under development or review, and that are expected to be signed by the EPA Administrator within the next 12 months. The Regulatory Agenda gives the public notice of the EPA's plans to review, propose, and issue regulations. While we try to accurately predict activities over the next 12 months, projected dates and schedules are often subject to change. The EPA submits its regulatory agenda to OMB in response to and in accordance with OMB's requests. OMB has responsibility for its ultimate publication as part of the semiannual Unified Agenda, including the timing of its publication.

The EPA voluntarily provides additional information to the public about our rulemaking activities beyond what is contained in the Regulatory Agenda. Each month, the Action Initiation List (AIL) gives the public an indication of actions the EPA is starting to work on, along with a brief description and an estimate of whether the action is expected to be published in the next 12 months. This information is a single snapshot in time, taken when work starts on the action. The EPA's Regulatory Development and Retrospective Review Tracker (RegDaRRT), another publicly available website, provides updates on priority rulemakings. RegDaRRT includes several useful search capabilities and provides additional information about actions that are not included as part of the Regulatory Agenda.

These three sources of information complement each other. The AIL gives an early indication of newly started actions and their timing. RegDaRRT provides regular updates on priority rulemakings. The Regulatory Agenda is a more formal compilation of regulatory actions prepared pursuant to Executive Order. Since rulemaking timelines are often subject to change and the information contained in these three places is prepared at different times and updated according to different schedules, projected dates may vary across the AIL, RegDaRRT, and the Regulatory Agenda.

In your letter, you expressed concern about the public notification about the Clean Energy Incentive Program (CEIP). The public process around the CEIP has been robust, inclusive, and timely. The EPA reached out to stakeholders extensively, seeking input that would help shape the eventual CEIP design details proposal. The final Clean Power Plan, published in October 2015, included the CEIP -- a program designed to help states and tribes and affected sources meet their Clean Power Plan (CPP) goals by removing barriers to investment in energy efficiency and solar measures in low-income communities and encouraging early investments in zero-emitting renewable energy generation. States may, but are not required to, implement this incentive program for early action. The development process for the CEIP has been an open and transparent one.

Once the EPA proposed certain design details for the optional CEIP on June 16, 2016, the agency embarked on the established public process for a proposed action under the Clean Air Act. The EPA held a public hearing in Chicago in August 2016. More than 300 people attended and 140 speakers offered testimony. At the end of the comment period on November 1, 2016, the public will have had about 4 months to develop and submit comments on this proposal -- comments that we will review as we work toward a final rule.

Your letter also requested information regarding petitions for rulemaking. That information is available on the EPA's petitions webpage, which can be accessed at <https://www.epa.gov/aboutepa/petitions-rulemaking>. Through that page, the EPA strives to provide information about petitions we receive for the issuance, amendment, or repeal of a rule. The information for each petition includes the date we received the petition, the name(s) of the petitioner(s), the related statute, a brief description of the petition, and a link to the petition itself. The page is fully up to date, and we will continue to provide information to the public about rulemaking petitions the EPA has received.

Your letter asks for information regarding pending administrative or judicial litigation involving the EPA. While the Department of Justice manages the EPA civil judicial litigation, the agency has used an on-line docket to track pending administrative actions since 2004, which is available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf. Similarly, pending enforcement actions, both administrative and judicial, are tracked by the Integrated Compliance Information System (ICIS) data system, accessible via the agency's Enforcement and Compliance History Online (ECHO) website at <https://echo.epa.gov/facilities/enforcement-case-search?srch=adv>. Using the supplied Enforcement Case Search tool, interested parties can generate lists of EPA cases filed but not yet concluded. Similar information can be obtained via ICIS directly. The agency strives to ensure this information is complete and current; however, as in all complex data aggregation, maintaining these dockets presents on-going challenges. The agency's Office of Enforcement and Compliance Assurance continues to explore mechanisms to assess and improve quality, correct errors as they are detected, and update the databases in timely fashion as new information becomes available.

The EPA is committed to maintaining a publicly-available website listing the notices of intent to sue (NOIs) received by the agency. Although quality control and assurance of the agency's public-facing webpage, available at <https://www.epa.gov/noi>, remains on-going, the agency understands that all notices of intent to sue (NOIs) filed against and received by the EPA since Jan. 1, 2013 -- but not including NOI which do not name the EPA as a party -- have been publicly posted. The link to each NOI is accompanied by summary information, including the date of the NOI, the statutory predicate (e.g., CWA or CAA, etc), the identification of plaintiff-petitioner(s), and a brief summary statement of their claim or assertion. The agency is continuing to update this database and will quickly correct errors on the site if and when they are detected. Likewise, the EPA is posting and will continue to post NOIs filed on or after January 1, 2013 on a rolling basis as they are received by the Office of General Counsel in Washington, DC. While

posting times may vary and in the past delays have occurred -- for example, where potential plaintiffs transmitted notices to multiple EPA offices and/or regions, necessitating additional time for proper routing -- the agency is committed to maintaining a current and up-to-date database that accurately reflects our notice records, including those pertaining to the Resource Conservation and Recovery Act (RCRA).

Your letter also requested a complete list of all delegations of authority that have been issued, amended, or revoked since January 1, 2016. Enclosed, please find the agency's 2016 delegations list. Such delegations are tracked by the agency's Office of Human Resources within the Office of Administration and Resources Management. Though this information is not posted on the agency's website, it is available to the public by request, traditionally through the FOIA process.

The EPA is managing its presidential transition activities consistent with the "Edward 'Ted' Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015." In accordance with that Act, the EPA has designated a Transition Director to serve on the Agency Transition Directors Council. For your reference, enclosed you will find copies of the memos regarding that selection. In addition, enclosed you will find two email messages that were sent to all EPA employees on June 1, and September 12, 2016, providing information and guidance regarding transition activities. Also attached is the information contained on the intranet site referenced in the September 12 message.

SESSIONS
ALABAMA

06-001-2305

COMMITTEES:
ARMED SERVICES
JUDICIARY
HEALTH, EDUCATION, LABOR, AND PENSIONS
BUDGET
JOINT ECONOMIC

United States Senate

WASHINGTON, DC 20510-0104

July 24, 2006

Mr. Stephen L. Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

CC:1
Chloe
Stephenie
Cherine
Kim / Nigel
Cherie
Kevin

Dear Mr. Johnson:

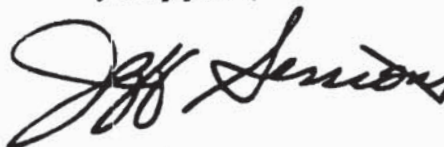
It has come to my attention that the STERIS Corporation, a medical and healthcare firm with multiple facilities in Alabama, has filed a petition with the Environmental Protection Agency to re-label their Vaporized Hydrogen Peroxide (VHP) product. The petition is currently before the Antimicrobials Division in the Office of Pesticide Programs.

STERIS believes that re-labeling their VHP product to allow decontamination of spaces of up to 4,000 cubic feet without additional testing would have a significant impact in reducing patient deaths in hospitals. The company believes, however, that as part of the ongoing toxicological review, the EPA is now considering a significant change from the OSHA approved standard of 1 part per million of hydrogen peroxide to a new level that is significantly lower. STERIS has reasonable concerns that this will further delay their petition.

It is my understanding that STERIS has been working with EPA on this request since mid-2003, and the company was told to expect a final response from EPA no later than June 13, 2006. Further, I am told that STERIS was notified shortly before that date that the EPA would require an additional four months to undertake a toxicological review. Therefore, I am writing to request, consistent with all applicable laws and regulations, a written explanation of the status of this petition, a justification for the delays in its review, and to urge its timely consideration by the agency.

Thank you for your prompt consideration. I look forward to your response and the timely resolution of this matter.

Very truly yours,



Jeff Sessions
United States Senator

JS:cc

PRINTED ON RECYCLED PAPER



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 18 2006

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your letter of July 24, 2006, to Environmental Protection Agency (EPA) Administrator Stephen L. Johnson, regarding the STERIS Corporation's petition to re-label its Vaporized Hydrogen Peroxide (VHP) product. Administrator Johnson asked me to respond on behalf of the Agency since my office is responsible for the regulation of pesticides.

VHP is currently registered as a sterilant for use in small enclosures such as glove boxes and isolators with a maximum size of 40 cubic feet. STERIS is requesting an amendment to allow VHP treatment on non-residential sites for significantly larger indoor areas (up to 4,000 cubic feet) which would include, for example, laboratories, animal research facilities, patient rooms, hotel rooms, offices, cruise ships, recreational areas and emergency response vehicles. The area to be treated would be sealed and enclosed to ensure that application occurs via a closed system. The sealed enclosure would not be released for general use until the hydrogen peroxide levels are at or below the proposed label concentration. STERIS has proposed a concentration level of 1.0 parts per million, which is the current Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL).

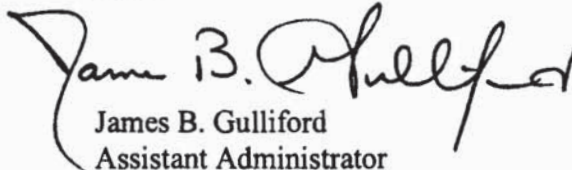
The greatest potential for human exposure is via the inhalation route to applicators or bystanders during the reentry period immediately following the application process and aeration phase. EPA needs to ensure that the levels at the time of reentry will not pose a risk to applicators or bystanders. The OSHA PEL for hydrogen peroxide, 1.0 parts per million, was originally developed in the 1950s and was based on the best information available at the time. Subsequent studies, however, have determined that a lower inhalation level of concern is necessary for this purpose. Based on our review of the STERIS' original application, bystander and applicator inhalation exposure would exceed this lower level of concern. This information was relayed to STERIS prior to the June 13, 2006, date referenced in your letter, which is the original deadline for a decision under the Pesticide Registration Improvement Act (PRIA). In addition, STERIS was informed that it would be required to submit a detailed fumigation management plan discussing, among other things, the proper action to take should a sealed area develop a leak.

A conference call was held with STERIS on June 15, 2006, during which the company agreed to prepare a fumigation management plan. In addition, STERIS advised EPA that it would submit additional data on the half-life of hydrogen peroxide to address the bystander and applicator inhalation exposure concerns. In order for STERIS to have adequate time to develop a fumigation management plan and submit additional data, and for EPA to evaluate this new data, the Agency and the company agreed to a new PRIA deadline of October 13, 2006.

The management plan and additional data were received by the Agency on June 28, 2006. EPA now believes it has sufficient information to make a determination on STERIS' amendment. The Agency remains committed to reaching a decision prior to the October 13, 2006, deadline. I will notify your staff when that decision is communicated to STERIS.

Again, thank you for your concern in this matter. If you have further questions or concerns please let me know, or your staff may contact Loan Nguyen in the Office of Congressional and Intergovernmental Relations at 202-564-4041.

Sincerely yours,



James B. Gulliford
Assistant Administrator

09-001-9797

COMMITTEES:
JUDICIARY
Ranking Member
ARMED SERVICES
ENERGY AND NATURAL RESOURCES
BUDGET

United States Senate

WASHINGTON, DC 20510-0104

December 18, 2009

The Honorable Lisa Jackson
Administrator
US Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

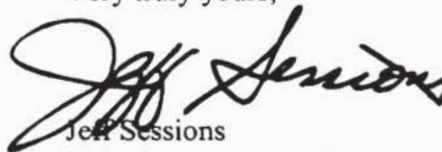
I am writing to express my utmost support for the application submitted by the Florence City School District to the US Environmental Protection Agency (EPA) for the Environmental Education Grant Program.

This funding, if awarded, would enable the Florence City School District to develop a field station in a Wisconsin-style barn in the beautiful 70-acre Deibert Park in Florence. Over the past few years, school district supervisors and teachers have worked collaboratively with the City of Florence's Urban Forestry Department and the Parks and Recreation Department in an effort to make Deibert Park into an outdoor classroom for environmental education.

The City of Florence recently renovated the interior of the barn to make it into a field station. This assistance would allow them to finish that process and stock the field station with the equipment necessary for the projects and experiments that students will conduct under the direction of their teachers and staff members from the Urban Forestry Department.

Upon review of this grant application, I am hopeful you will agree that it has merit and is worthy of funding. Therefore, I urge your full consideration and await a favorable response. If I can answer any questions or provide further information, please do not hesitate to contact me.

Very truly yours,



Jeff Sessions
United States Senator

JS: mt

BIRMINGHAM

341 VANCE FEDERAL BUILDING
1800 FIFTH AVENUE NORTH
BIRMINGHAM, AL 35203-2171
(205) 731-1500

HUNTSVILLE

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(251) 414-3083

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7550 HALCYON SUMMIT DRIVE
SUITE 150
MONTGOMERY, AL 36117
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 19 2010

OFFICE OF
CHILDREN'S HEALTH PROTECTION
AND ENVIRONMENTAL EDUCATION

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your recent letter supporting a grant proposal submitted to the Environmental Protection Agency by the Florence City School District. We are pleased to see that your constituents aim to work collaboratively with the City of Florence's Urban Forestry Department to finish a field station in an outdoor classroom for environmental education at Deibert Park.

This year we have received approximately 1,400 proposals for our Environmental Education Grant Program. We can assure you that your constituent's proposal will be reviewed and given fair consideration during our extensive evaluation process used to score the applications received. The two-tiered evaluation process involves a preliminary evaluation of proposals by non-EPA reviewers from universities, nonprofit organizations and other expert sources. We expect to complete the internal EPA review process before summer and will notify your constituents regarding the status of their application.

We appreciate your continued support for our grant program. Enclosed for your review are descriptions of the environmental education (EE) grants awarded nationwide and listed by state in FY 2008. You can learn more about the EE projects funded in Alabama on line at <http://epa.gov/education/grants/al01.htm>.

Again, thank you for your letter. If you have additional questions, please contact me, or your staff may call Clara Jones in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Grevatt", is written over a horizontal line.

Peter Grevatt, Director
Office of Children's Health Protection
and Environmental Education

Enclosure

10-000-4690

United States Senate

WASHINGTON, DC 20510

March 25, 2010

The President
The White House
Washington, DC 20500

Dear Mr. President:

First, we applaud your remarks in the State of the Union that the United States needs to build "a new generation of safe, clean nuclear power plants." As nuclear energy supplies more than 70 percent of the electricity generated by sources that do not emit greenhouse gases into the atmosphere, we agree with you that safe nuclear power must play an increasingly important role in meeting our rising energy demand and ensuring cleaner air. We also recognize that there are many hurdles to realizing a significant expansion of nuclear power, including financial and regulatory challenges, workforce issues, the development of new technologies, and ensuring the safety and longevity of the current fleet, to name a few.

We are encouraged that the U.S. Nuclear Regulatory Commission (NRC) currently is reviewing applications for 22 new reactors to be built over the next ten to twenty years. However, we recognize that there will be challenges ahead. The Administration's 2011 budget request increasing loan volume to \$54.5 billion is an important catalyst to accelerate construction of new nuclear plants, but we need to continue to hear from utilities and investors as to what else is needed to get the first of the new generation of plants off the ground.

To address the myriad challenges ahead, we propose that the White House partner with us to co-sponsor a nuclear energy summit. This summit would be a meeting of key leaders, stakeholders, and innovators to discuss and plan for nuclear energy's future. We believe that the White House's support will be crucial to convene the right leaders in the U.S. Government and the private sector to develop a strategy to ensure that nuclear power plays a necessary and vital role in our national energy and environmental policy.

We recognize your commitment to finding the solutions to our nation's energy challenges and look forward to attendance and support by several members of your leadership team, including Energy Secretary Steven Chu, NRC Chairman Gregory Jaczko, and Environmental Protection Agency (EPA) Administrator Lisa Jackson. The attendees at this summit will be senior executives representing the commercial energy industry and related industrial sectors and government, including Congress, the White House, the Department of Energy and its national laboratories such as Idaho National Laboratory, the NRC, and the EPA. We would also like to

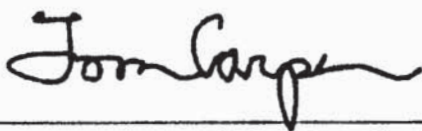
include leaders in the investment community, such as Bill Gates, who have the financial wherewithal to steer markets and interest in potential investments in new nuclear-related technologies.

Among the issues this summit should address are:

- The development of a 50-year strategy to ensure that nuclear power continues to play a vital role in our domestic energy supply;
- The major initiatives that are currently underway or contemplated for the nation and the extent to which these set the stage for the nuclear energy strategy;
- The responsibilities of government and the private sector in fulfilling a new nuclear strategy; and
- The possible creation of an industry/government working group that will provide advice and counsel to key government agencies that will help ensure resources and efforts are effectively implemented to execute a national nuclear energy policy.

We would appreciate your views on co-sponsoring such a summit, which we think would be beneficial to be held within the next 3-4 months, as well as your suggestions for principal coordinators and attendees. Forging a new future for nuclear power generation is vital to our nation's security and energy needs, and we look forward to working with you on this endeavor.

Sincerely,





Mary Landrum

David Vitt

Lamar Alexander

Amy Klobuchar

Mike Cryer

Jim Webb

Mark R. Warner

Jim Webb

Jefferson

BLANCHE L. LINCOLN, ARKANSAS
CHAIRMAN

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AMY KLOBUCHAR, MINNESOTA
MICHAEL BENNET, COLORADO
KIRSTEN GILLIBRAND, NEW YORK

10-001-2059
United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY

WASHINGTON, DC 20510-6000

202-224-2035

SAXBY CHAMBLISS, GEORGIA
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JOHN THUNE, SOUTH DAKOTA
JOHN CORNYN, TEXAS

July 2, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

We are very concerned about the U.S. Environmental Protection Agency's (EPA) decision in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule to consider the emissions from biomass combustion the same as emissions from fossil fuels.

EPA's decision contradicts long-standing U.S. policy, as well as the agency's own proposed Tailoring Rule. Emissions from the combustion of biomass are not included in the Department of Energy's voluntary greenhouse gas (GHG) emissions reporting guidelines and neither are they required to be reported under EPA's GHG Reporting Rule. In the proposed Tailoring Rule, EPA proposed to calculate a source's GHG emissions based upon EPA's Inventory of U.S. GHG Emissions and Sinks. The GHG Inventory excludes biomass emissions.

We think you would agree that renewable biomass should play a more significant role in our nation's energy policy. Unfortunately, the Tailoring Rule is discouraging the responsible development and utilization of renewable biomass. It has already forced numerous biomass energy projects into limbo. We are also concerned that it will impose new, unnecessary regulations on the current use of biomass for energy.

We appreciate that EPA intends to seek further comments on how to address biomass emissions under the PSD and Title V programs. With this rule, the agency has made a fundamental change in policy with little explanation. We strongly encourage you to reconsider this decision and immediately begin the process of seeking comments on it. In addition, we appreciate Secretary of Agriculture Tom Vilsack's commitment to working with EPA on this issue and encourage you to utilize the expertise of the U.S. Department of Agriculture.

Robert Winter

Susan Collins

Kay L. Hazen

Th. W.

Mike Croy

Paul Calman

John Thorne

Jan E. Kins

Bob Carey, Jr.

Jeff Sessions

←

Patty Murray

Olympia Snowe

Mark Begich

Mark R. Warner

Richard Shelby

Jeffrey A. Merkley

Jon Tester

Joe Manchin

Coincidentally

My Barnes

Don Vitter

Jeanne Shaheen

George V. Voinovich



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 12 2010

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your July 2, 2010, letter co-signed by 24 of your colleagues, to Administrator Jackson raising concerns regarding the treatment of biomass combustion emissions in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (the "Tailoring Rule"). At her request, I am writing to respond.

I would like to address your comments about the treatment of biomass combustion emissions in the final Tailoring Rule and to assure you that we plan to further consider how the PSD and Title V permitting programs apply to these emissions.

As you noted, the final Tailoring Rule does not exclude biomass-derived carbon dioxide (CO₂) emissions from calculations for determining PSD and Title V applicability for greenhouse gases (GHGs). To clarify a point made in your letter, the proposed Tailoring Rule also did not propose to exclude biomass emissions from the calculations for determining PSD and Title V applicability for GHGs. The proposed Tailoring Rule pointed to the U.S. Environmental Protection Agency's (EPA) Inventory of Greenhouse Gas Emissions and Sinks for guidance on how to estimate a source's GHG emissions on a CO₂-equivalent basis using global warming potential (GWP) values¹. This narrow reference to the use of GWP values for estimating GHG emissions was provided to offer consistent guidance on how to calculate these emissions and not as an indication, direct or implied, that biomass emissions would be excluded from permitting applicability merely by association with the national inventory.

We recognize the concerns you raise on the treatment of biomass combustion emissions for air permitting purposes. As stated in the final Tailoring Rule, we are mindful of the role that biomass or biogenic fuels and feedstocks could play in reducing anthropogenic GHG emissions, and we do not dispute observations that many federal and international rules and policies treat biogenic and fossil fuel sources of CO₂ emissions differently. Nevertheless, we explained that the legal basis for the Tailoring Rule, reflecting specifically the overwhelming permitting burdens that would be created under the statutory emissions thresholds, does not itself provide a rationale for excluding all emissions of CO₂ from combustion of a particular fuel, even a biogenic one.

¹ See 74 FR 55351, under the definition for "carbon dioxide equivalent"

The fact that in the Tailoring Rule EPA did not take final action one way or another concerning such exclusion does not mean that EPA has decided that there is no basis for treating biomass combustion CO₂ emissions differently from fossil fuel combustion CO₂ emissions under the Clean Air Act's PSD and Title V programs. The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance US energy security. Accordingly, on July 9, 2010 we issued a Call for Information² asking for stakeholder input on approaches to addressing GHG emissions from bioenergy and other biogenic sources, and the underlying science that should inform these approaches. Taking into account stakeholder feedback, we will examine how we might address such emissions under the PSD and Title V programs. We will move expeditiously on this topic over the next several months. As we do so, we will continue to work with key stakeholders and partners, including the US Department of Agriculture, whose offices bring recognized expertise and critical perspectives to these issues.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a stylized, flowing script.

Gina McCarthy
Assistant Administrator

² Posted online at http://www.epa.gov/climatechange/emissions/biogenic_emissions.html

10-001-6198

United States Senate

WASHINGTON, DC 20510

September 24, 2010

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our concern about the EPA's proposed Maximum Achievable Control Technology (MACT) rules, including the so-called Boiler MACT and CISWI MACT, which were published in the Federal Register on June 4, 2010. As our nation struggles to recover from the current recession, we are deeply concerned that the pending Clean Air Act boiler MACT regulations could impose onerous burdens on U.S. manufacturers, leading to the loss of potentially thousands of high-paying jobs this sector provides. As the national unemployment rate hovers around 10 percent, and federal, state, and municipal finances continue to be in dire straits, our country should not jeopardize thousands of manufacturing jobs. The flow of capital for new investment and hiring is still seriously restricted, and the projected cost of compliance could make or break the viability of continued operations. Both small and large businesses are vulnerable to extremely costly regulatory burdens, as well as municipalities, universities and federal facilities.

The EPA's regulatory analysis understates the significant economic impacts of the proposed rule. For example, the impact will be substantial to small businesses, such as sawmills, which have large boilers. In addition, EPA has concluded that no additional large biomass fired boilers will be built in the United States, indicating the cessation of the domestic biomass industry. As a result, we are rightly concerned that the proposed standards appear to create serious obstacles to the development of biomass energy projects, which have the potential to significantly reduce air pollution and production of greenhouse gases. Further, we are concerned that if adopted as currently proposed, the boiler MACT rules would discourage the current use of wood biomass in wood, pulp, and paper facilities, and most likely result in significant job losses in these industries. While we support efforts to address serious health threats from air emissions, we also believe that regulations can be crafted in a balanced way that sustains both the environment and jobs.

In Section 101 of the Clean Air Act, Congress declared that one of the fundamental purposes of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Congress provided EPA with discretion in certain areas to carefully design regulations that protect health and the environment while promoting the productive capacity of the nation. We are writing today to ask that you exercise this discretion in completing the MACT rulemakings. We understand that the Boiler MACT rule alone could impose tens of billions of dollars in capital costs at thousands of facilities across the country. The CISWI rule would have devastating impact on the biomass industry. Thus, we appreciate your willingness, as expressed in your


responses to previous Congressional letters, to consider flexible approaches that appropriately address the diversity of boilers, operations, sectors, and fuels that could prevent severe job losses and billions of dollars in unnecessary regulatory costs.

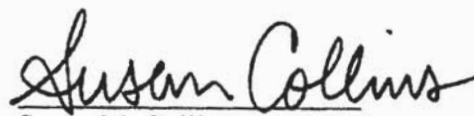
To help reduce the burden of the rule in a manner that does not compromise public health and safety, we believe EPA should consider exercising the "health threshold" discretion that Congress provided under Section 112(d)(4) of the Act. Under this section of the law, for emissions that are considered safe to human health in concentrations that fall below an established threshold, EPA may use this risk information to set emissions standards. In reaching your final decision, we ask that you carefully consider the extensive record that supported the Agency's determination to include health-based emissions limitations for hydrogen chloride and manganese in the previous Boiler MACT rulemaking that was set aside by the reviewing court on wholly unrelated grounds.

EPA also should use a method to set emissions standards that are based on what real world best performing units actually can achieve. It is our understanding that the EPA emissions database does not truly reflect the practical capabilities of controls or the variability in operations, fuels and testing performance across the many regulated sectors and boilers, especially in light of the proposal's reliance on surrogates, such as carbon monoxide – a pollutant with wide variability in actual boiler operation especially from biomass-fired boilers. In addition, the Clean Air Act also provides EPA with broad discretion to subcategorize within a source category based on size, type and class of source to help ensure that the emission limitations are determined based on what real world best performing units can ultimately achieve in practice. We do not believe that EPA has fully exercised its responsibility to subcategorize the numerous types and combinations of boilers and fuels. In particular, we urge you to carefully consider how the regulations can promote energy recovery from renewable, alternative fuels such as biomass. Finally, we urge you to consider how work practices for all gas-fired units, such as biogas and land fill gas fired boilers, could avoid the increase in emissions (e.g., NOx and CO2) and energy use that would result from the numerous control technologies required with no guarantee of actually achieving the emission limits.

As EPA turns to developing final MACT rules, we hope you will carefully consider these recommendations and comments to protect the environment and public health while fostering economic recovery and jobs.

Sincerely,


Mary L. Landrieu
U.S. Senator


Susan M. Collins
U.S. Senator

Ron Wyden

Ron Wyden
U.S. Senator

Lamar Alexander

Lamar Alexander
U.S. Senator

Evan Bayh

Evan Bayh
U.S. Senator

George V. Voinovich

George V. Voinovich
U.S. Senator

Patty Murray

Patty Murray
U.S. Senator

Olympia Snowe

Olympia Snowe
U.S. Senator

Blanche L. Lincoln

Blanche Lincoln
U.S. Senator

Kit Bond

Kit Bond
U.S. Senator

Bob Casey, Jr.

Robert Casey
U.S. Senator

Bob Corker

Bob Corker
U.S. Senator

Amy Klobuchar

Amy Klobuchar
U.S. Senator

Richard Shelby

Richard Shelby
U.S. Senator

Mark Pryor

Mark Pryor
U.S. Senator

Roger Wicker

Roger Wicker
U.S. Senator

Mark Begich

Mark Begich
U.S. Senator

Saxby Chambliss

Saxby Chambliss
U.S. Senator



Claire McCaskill
U.S. Senator



James Risch
U.S. Senator



Mark Warner
U.S. Senator



Richard Burr
U.S. Senator



Barbara Mikulski
U.S. Senator



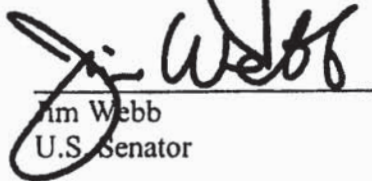
Mike Crapo
U.S. Senator



Daniel Inouye
U.S. Senator



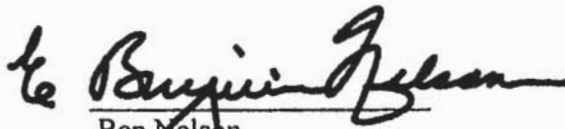
Tom Coburn
U.S. Senator



Jim Webb
U.S. Senator



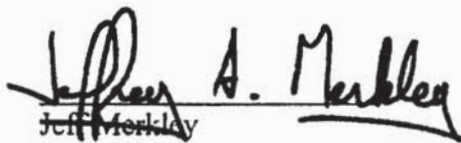
Jeff Sessions
U.S. Senator



Ben Nelson
U.S. Senator



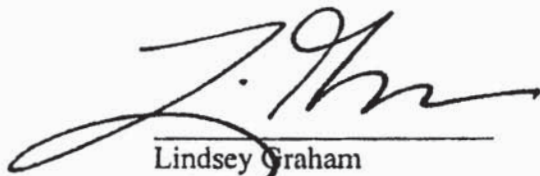
James Inhofe
U.S. Senator



Jeff Merkley
U.S. Senator



Thad Cochran
U.S. Senator



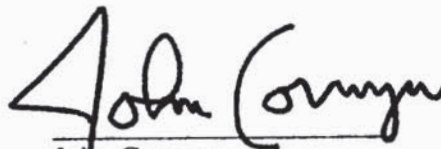
Lindsey Graham
U.S. Senator



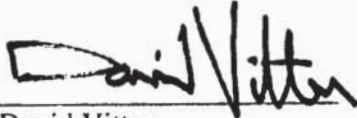
Johnny Isakson
U.S. Senator



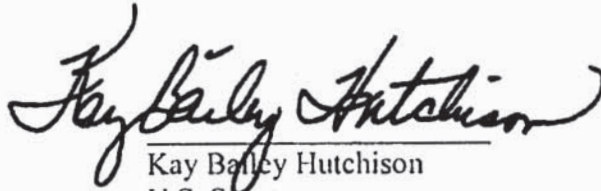
Herb Kohl
U.S. Senator



John Cornyn
U.S. Senator



David Vitter
U.S. Senator



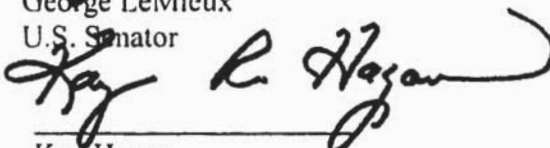
Kay Bailey Hutchison
U.S. Senator



George LeMieux
U.S. Senator



Scott Brown
U.S. Senator



Kay Hagan
U.S. Senator

cc: Regina McCarthy, Environmental Protection Agency
Robert Perciasepe, Environmental Protection Agency
Cass Sunstein, Office of Management and Budget
Thomas Vilsack, Department of Agriculture
Gary Locke, Department of Commerce
Lawrence Summers, National Economic Council
Jeffery Zients, Acting Director, Office of Management and Budget
Ron Bloom, Department of the Treasury
Nicole Lamb-Hale, Department of Commerce
Melody Barnes, Domestic Policy Council
James Messina, Executive Office of the President
Philip Schilliro, Executive Office of the President
Cecilia Munoz, Executive Office of the President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 28 2010

THE ADMINISTRATOR

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20515

Dear Senator Sessions:

Thank you for your recent letter about the proposed standards for controlling hazardous air emissions from industrial, commercial, and institutional boilers and process heaters ("Boiler NESHAP") and about the proposed standards for commercial and industrial solid waste incinerators ("CISWI Rule"). You raise important concerns, which I take very seriously.

As you know, the rulemakings at issue are not discretionary. In Sections 112 and 129 of the Clean Air Act, Congress directed the U.S. Environmental Protection Agency ("EPA") to establish these standards. EPA issued the proposals after many years of delay, and in order to meet a deadline ultimately set by the U.S. District Court for the District of Columbia.

Many of the facilities in question are located in very close proximity to neighborhoods where large numbers of people live and large numbers of children go to school. EPA estimates that the new standards will cut the facilities' toxic mercury emissions in half and, in the process, reduce their annual emissions of harmful sulfur dioxide and particulate matter by more than 300,000 tons and more than 30,000 tons respectively.

Each year, those reductions in air pollution will avoid an estimated 2,000 to 5,100 premature deaths, 1,400 cases of chronic bronchitis, 35,000 cases of aggravated asthma, and 1.6 million occurrences of acute respiratory symptoms. EPA estimates that Americans will receive five to twelve dollars in health benefits for every dollar spent to meet the standards.

Section 112 of the Clean Air Act directs EPA to calibrate the standards for each subcategory of facility to the emissions control that the best-performing twelve percent of existing facilities in that subcategory are currently achieving. The same section of the statute identifies the types of information that are necessary to justify the establishment of any separate subcategory. In an effort to establish separate subcategories wherever appropriate, and to calculate accurately the standards for each subcategory, EPA asked the affected companies and institutions for technical data about their facilities long before the court-ordered deadline for publishing a proposal. As is often the case in Section 112 rulemaking efforts, however, EPA did not receive many data. While the agency was not left entirely lacking in relevant information, the limited response from affected businesses and institutions did make it difficult for EPA to

delineate subcategories and calculate standards that fully reflected operational reality. The agency nevertheless was legally required to publish proposed subcategories and standards based on the information it had at the time.

Fortunately, a number of potentially affected businesses and institutions responded to EPA's published proposal by giving the agency relevant data that it had not possessed at the time of the proposal. The agency will make exhaustive use of all of the relevant data received during the period for public comment. EPA is now learning things that it did not know before about the particulars of affected sectors and facilities. The final standards will reflect the agency's new learning, and that is how the rulemaking process is supposed to work. In fact, EPA is so committed to ensuring that the final standards will reflect all of the relevant information received during the public comment period that the agency has just sought and obtained from the District Court a one-month postponement, until January 16, 2011, of the deadline for issuing the final Boiler NESHAP. EPA is taking the necessary time to get the final standards right.

Businesses that burn biomass in their boilers and process heaters are particularly worried that the limited information underlying EPA's proposed subcategories and standards might cause many boilers that currently burn renewable biomass to shut down entirely or to convert to burning non-renewable fossil fuels. Please know that EPA is paying particular attention to the subject of biomass-fired boilers and process heaters as the agency works to develop final standards. In your letter, you reference EPA's projection regarding new major-source boilers that burn biomass. That projection, which comes originally from the Energy Information Administration ("EIA"), is not based on the Boiler NESHAP or the CISWI Rule. Neither EPA nor EIA is projecting that these rules will cause anything like the cessation of the domestic biomass industry.

While many businesses are pleased that EPA solicited comment on using Section 112(d)(4) of the Clean Air Act to set a health-based standard (as opposed to a purely technology-based standard) for certain hazardous air pollutants such as hydrogen chloride, those same businesses believe that EPA should have identified the establishment of a health-based standard as the agency's preferred outcome. The discretionary establishment of a health-based standard would need to be based on an adequate factual record justifying it. EPA did not identify a health-based standard as a preferred outcome in the proposal, because the agency did not possess at the time of the proposal a factual record that could justify it.


The pollution control equipment that limits emissions of hydrogen chloride also happens to limit emissions of other highly toxic air emissions, including acid gases. Thus, while a health-based standard might be justified for hydrogen chloride in isolation, EPA needs to consider the ramifications of such an alternative for the control of other highly toxic pollutants. With that said, EPA has taken note of the public comments on the establishment of a health-based standard. Several stakeholders commented, for example, that most biomass might contain less acid gas than most fossil fuels, potentially making biomass-fired boilers and process heaters better candidates than fossil fuel-fired ones for a health-based standard. EPA will carefully evaluate the substance and relevance of those comments, as well as any additional data submitted during the public comment period, before making a final decision on the establishment of any health-based standard.

In recent weeks, two industry trade associations issued two separate presentations, each claiming that the Boiler NESHAP and CISWI Rule would cost the U.S. economy jobs. The presentations differ significantly from each other when it comes to the number of jobs that allegedly would be lost. Moreover, the associations' methods for reaching their projections are in several respects opaque and in others clearly flawed. For example, they neglect to count the workers who will be needed to operate and maintain pollution control equipment and to implement work practices that reduce emissions.

Perhaps the most important observation to make about the two associations' claims, however, is that they pertain to a proposal, rather than to a final EPA action. For reasons stated earlier in this reply, the final standards will most assuredly differ from the proposed ones. The differences will demonstrate EPA's intent focus on making the regulatory subcategories appropriately reflect industrial variation in the real world, and on aligning the standards in each subcategory with the performance that real-world conditions prove are already achievable. The Clean Air Act does not place our need to increase employment in conflict with our need to protect public health. EPA's final standards will not either.

Again, thank you for your letter. If you have additional questions, please do not hesitate to contact me, or to have your staff contact David McIntosh in EPA's Office of Congressional and Intergovernmental Relations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a large, stylized loop at the end.

Lisa P. Jackson

United States Senate

WASHINGTON, DC 20510

February 15, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

As the 112th United States Congress commences, we write to share with you our continuing concern with the potential regulation of farm and rural dusts through your review of the National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM10), or "dust." Proposals to lower the standard may not be significantly burdensome in urban areas, but will likely have significant effects on businesses and families in rural areas, many of which have a tough time meeting current standards.

Naturally occurring dust is a fact of life in rural America, and the creation of dust is unavoidable for the agriculture industry. Indeed, with the need to further increase food production to meet world food demands, regulations that will stifle the U.S. agriculture industry could result in the loss of productivity, an increase in food prices, and further stress our nation's rural economy.

Tilling soil, even through reduced tillage practices, often creates dust as farmers work to seed our nation's roughly 400 million acres of cropland. Likewise, harvesting crops with various farm equipment and preparing them for storage also creates dust.

Due to financial and other considerations, many roads in rural America are not paved, and dust is created when they are traversed by cars, trucks, tractors, and other vehicles. To potentially require local and county governments to pave or treat these roads to prevent dust creation could be tremendously burdensome for already cash-strapped budgets.

While we strongly support efforts to safeguard the wellbeing of Americans, most Americans would agree that common sense dictates that the federal government should not regulate dust creation in farm fields and on rural roads. Additionally, the scientific and technical evidence seems to agree. Given the ubiquitous nature of dust in agricultural settings and many rural environments, and the near impossible task of mitigating dust in most settings, we are hopeful that the EPA will give special consideration to the realities of farm and rural environments, including retaining the current standard.

Thank you for your consideration of this important matter.

Clara Kim

Lydia Wister

to Benjamin Nelson



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 14 2011

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of February 15, 2011, co-signed by 32 of your colleagues, expressing your concerns over the ongoing review of the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The Administrator asked that I respond to your letter.

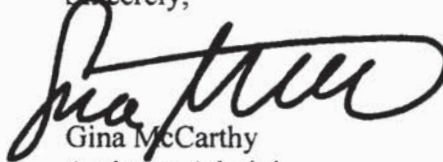
I appreciate the importance of NAAQS decisions to state and local governments, in particular to areas with agricultural communities, and I respect your perspectives and opinions. I also recognize the work that states have undertaken to improve air quality across the country. The NAAQS are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture or rural roads). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

No final decisions have been made on revising the PM NAAQS. In fact, we have not yet released a formal proposal. Currently, we continue to develop options, including the option of retaining the current 24-hour coarse PM standard. To facilitate a better understanding of the potential impacts of PM NAAQS standards on agricultural and rural communities, EPA recently held six roundtable discussions around the country. This is all part of the open and transparent rulemaking process that provides Americans with many opportunities to offer their comments and thoughts. Your comments will be fully considered as we proceed with our deliberations.

Under the Clean Air Act, decisions regarding the NAAQS must be based solely on an evaluation of the scientific evidence as it pertains to health and environmental effects. Thus, the Agency is prohibited from considering costs in setting the NAAQS. But cost can be - and is - considered in developing the control strategies to meet the standards (i.e., during the implementation phase). Furthermore, I want to assure you that EPA does appreciate the importance of the decisions on the PM NAAQS to agricultural communities. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities.

Again, the Administrator and I thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", written in a cursive style.

Gina McCarthy
Assistant Administrator

United States Senate

WASHINGTON, DC 20510-0104

May 10, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20560

Re: Coalbed Methane ELG Proposal

Dear Administrator Jackson:

Thank you for appearing recently before the Senate Committee on Environment and Public Works to explain your FY2013 budget request. Our exchange focused primarily on budgetary matters. I also wanted to inquire concerning other specific matters of concern to me, although our time was too short to cover all of those issues at the hearing. In this letter, I am writing to express my serious concerns about the Environmental Protection Agency's proposed development of effluent limitation guidelines (ELGs) for the coalbed methane industry and to request your prompt response.

I want to begin by thanking you for re-opening the public comment period for the coalbed methane ELG proposal, which recently closed. That was something I requested, and I greatly appreciate your willingness to do so. I know our Alabama operators appreciated the opportunity to respond to the vast amount of information EPA presented in its justification for the ELG. I urge you to give their comments full and careful consideration.

I have received a copy of the Alabama comments and I am more concerned than ever that this ELG process is misplaced, driven by bad science, and may very well result in the shut-down of most, or even all of, the coalbed methane industry in Alabama. Currently, coal seams are the largest single source (about 52 percent) of natural gas production in Alabama. To my state alone, coalbed methane production provides at least \$250 million in annual economic impact, thousands of good-paying jobs, and a clean fuel for industrial, business and residential uses. The impact nationally would be even more dramatic, as low-cost natural gas is a vital and clean domestic energy source. Our country needs to pursue policies that increase the production of natural gas, but EPA's ELG proposal would have the opposite effect.

In order for an ELG to be legally implemented, the regulations imposed and technology required must be *economically achievable*. In 2008, EPA based its initial review of the economic practicalities of an ELG on a price point for natural gas that was a recent historical high. Today, natural gas prices are at

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a decade low and they are expected to remain at near-record low levels for the foreseeable future. For example, the spot price for natural gas in the Black Warrior Basin averaged near \$10 per MMBTU during the initial review in 2008, and now I understand that this spot price recently dropped to the \$2 range. These low natural gas prices fundamentally alter EPA's initial analysis on the ELG proposal. I simply do not see how EPA can meet the legal requirement that the ELG be economically achievable under prevailing conditions.

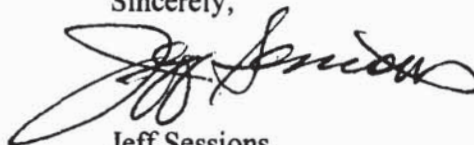
Moreover, the proposed coalbed methane ELG process is consuming scarce government and private sector resources with little, or no, environmental benefit. The State of Alabama has successfully managed National Pollutant Discharge Elimination System (NPDES) permits for the coalbed methane industry for 25 years with EPA regional supervision. This proposed ELG regulation is even less necessary now that most coalbed methane wells in Alabama are experiencing decreased gas and water production.

In light of the foregoing, please respond to this letter within 30 days to provide the following information:

- (1) How does EPA intend to take into account prevailing economic conditions and natural gas prices when evaluating whether the proposed ELG is economically achievable?
- (2) If the ELG is found to be economically unachievable in light of prevailing economic conditions and natural gas prices, does EPA intend to withdraw its ELG proposal?
- (3) When do you expect EPA to make a final decision whether to withdraw the ELG proposal or proceed to a final rule?

Thank you for your consideration of this important issue. I look forward to your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Sessions", written over a horizontal line.

Jeff Sessions
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 12 2012

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510-0104

OFFICE OF
WATER

Dear Senator Sessions:

Thank you for your letter of May 10, 2012, to Administrator Lisa P. Jackson expressing interest in our biennial plan evaluating the need for effluent limitation guidelines and standards (ELGs) for various industries including the coalbed methane (CBM) industry. As you know, on October 20, 2011, after several years of study, we announced our intention to conduct the coalbed methane rulemaking, with a proposed rulemaking expected in 2013.

Coalbed methane extraction requires the extraction of water in the coal formation in order to release the methane. Volumes of water vary with the formation but in the U.S. a total of 45 billion gallons were extracted in 2008 and about half of that volume was discharged into surface waters. In addition, the discharged water typically has elevated concentrations of Total Dissolved Solids (TDS or salts). These salts can adversely affect aquatic life and cause detrimental water quality impacts. For these reasons, the EPA decided to initiate a rulemaking for the coalbed methane sector. As we progress towards a proposed rule, we intend to work with the industry and other stakeholders to collect information that would improve our understanding of the industry and available wastewater treatment technologies. This information gathering activity continues today.

First, I would like to clarify that the EPA has not issued a proposed rulemaking for the CBM industry; we have only announced our intention to continue data gathering and propose a rule for public notice and comment in 2013. Second, I would like to respond to each of your individual questions below:

Question:

How does the Environmental Protection Agency (EPA) intend to take into account prevailing economic conditions and natural gas prices when evaluating whether the proposed ELG is economically achievable?

Answer:

The EPA is aware of the very significant change that has occurred in the price of natural gas in the four years since we surveyed the CBM industry. We have been in contact with industry representatives, including those from Alabama, to ask for their help in updating the data we collected in our survey. We also plan to use publically available information to improve our information database.

Question:

If the ELG is found to be economically unachievable in light of prevailing economic conditions and natural gas prices, does the EPA intend to withdraw its ELG proposal?

Answer:

The Clean Water Act (CWA) requires that Best Available Technology (BAT) limits be economically achievable. If our analysis shows that there is no technology that meets the statutory requirements of being both the best available and economically achievable, then we will not proceed with a rulemaking.

Question

When do you expect the EPA to make a final decision whether to withdraw the ELG proposal or proceed to a final rule?

Answer:

At this point, the EPA has not proposed an ELG for the CBM industry, we have only announced our intention to initiate a rulemaking. The announcement was included in the biennial Effluent Guidelines Plan in which the EPA publishes a schedule for future effluent guidelines rulemakings. As stated above, the EPA published 2013 as the date for the proposal of a coalbed methane effluent guideline. Currently, we are updating the data collected through our survey to reflect changes that have occurred since the data was collected, including changes in the price of natural gas. These data will be used in the analysis of technologies and the economic achievability of those technologies, as required in the CWA.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK DAIG, REPUBLICAN STAFF DIRECTOR

13-600-2511

February 8, 2013

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Jackson:

The complexity and sweeping nature of National Ambient Air Quality Standards (NAAQS) require they be based on sound scientific data and a robust decision making process. In regard to the recently promulgated NAAQS for Particulate Matter (PM NAAQS), finalized December 14, 2012, we are concerned that this rule is based on incomplete science and a truncated process and may be imposing unnecessary new and additional burdens on states and localities.

In touting the finalized PM NAAQS, EPA emphasized that the benefits of the rule would far outweigh the costs. In the final rule's preamble, however, EPA admits, "Important uncertainties remain in the qualitative and quantitative characterizations of health effects attributable to [PM]." ¹ Furthermore, the Agency's Regulatory Impact Analysis (RIA), which was done in support of the PM NAAQS, cites at least 13 different recent rules that relate to PM, all of which are subject to the same uncertainties. ² We interpret this situation as one where the benefit claims used in the PM NAAQS final rule, subject as they are to the significant uncertainties that EPA recognizes, in actuality result in EPA adopting a rule that will deliver very few benefits.

In addition, the PM NAAQS rule is likely to impose significant costs which EPA failed to acknowledge or account for in the Agency's RIA. According to the Agency, the RIA is prepared to provide the public with estimates of the costs and benefits of the standard and is utilized to fulfill the requirements of Executive Orders 12866 and 13563 as well as OMB Circular A-4. ³

¹ National Ambient Air Quality Standards for Particulate Matter; Final Rule, Prepublication Version (December 14, 2012) at 48. (hereinafter "PM NAAQS") available at: <http://www.epa.gov/pm/2012/finalrule.pdf>.

² Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter, U.S. EPA (December 2012) at ES-4. (hereinafter "RIA") available at: <http://www.epa.gov/pm/2012/finalria.pdf>.

³ RIA at ES-1.

Interestingly, EPA chose to produce a remarkably conservative cost estimate using the lowest possible cost assumptions, employing the range of recently promulgated and overlapping PM rules as tools to reduce rather than compound costs. Ultimately, they ignored the management costs the new PM standards will impose on states because the Agency did not want to make any assumptions regarding the actions that states would choose to take in response to the new standards.⁴ The management costs states are facing may now be further complicated by two recent court decisions which require EPA to redo implementation rules for the 1997 PM NAAQS.⁵

While a conservative approach is taken in regard to cost, EPA takes a liberal approach in making assumptions regarding benefits. For example, EPA's benefits analysis is premised on the assumption that "all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality." The only support provided for this assumption is scientific research finding that too much uncertainty exists regarding the variability of PM to reach any reliable conclusions.⁶

EPA also claims the PM NAAQS rule will not impact 99 percent of U.S. counties and parishes. It is difficult to understand how EPA can make this claim when, at the same time, the rule requires substantial changes to the monitoring protocols for PM. These changes will likely force more areas into nonattainment. In its analysis and public statements regarding the new PM NAAQS, EPA refused to acknowledge that these changes will effectively make the new standard significantly more stringent and result in a broader range of new cost and implementation issues.

We would all like to see a robust economic recovery during the next few years and, as President Obama noted as recently as January 14, "[W]e are poised for a good year."⁷ A "good year" includes increased economic and manufacturing activity not experienced during our recent economic struggles. The artificially low cost estimates used by EPA rely on this period of reduced economic and manufacturing activity. As attainment designations will be based on monitoring data from 2011 through 2013, a "good year" will almost certainly trigger an increase in the number of areas designated nonattainment under the new standard. It is well known that nonattainment designations increase energy prices, reduce productivity, and drive manufacturing from nonattainment areas, thus depressing economic growth.⁸

Based on our concerns, we ask for specific responses to the following questions by February 22, 2013:

1. In a declaration submitted to the DC Court of Appeals on January 12, 2012, EPA Assistant Administrator McCarthy stated that the complexity of the PM NAAQS

⁴ RIA at ES-13-14.

⁵ See *NRDC and Sierra Club v. EPA*, No. 08-1250-cr, (D.C. Cir. Jan. 4, 2013); *Sierra Club v. EPA*, No. 10-1413-cr, (D.C. Cir. Jan. 22, 2013).

⁶ RIA at ES-11.

⁷ See <http://theweek.com/article/index/238748/president-obama-attacks-the-gop-on-the-debt-ceiling>.

⁸ See Michael Greenstone, John A. List & Chad Syverson, *The Effects of Environmental Regulation on the Competitiveness of U.S. Manufacturing*, (February 2011), available at: www2.census.gov/ces/wp/2011/CES-WP-11-03.pdf and Scott E. Lowe & Samia Islam, *Impact of Air Quality Regulations on Entrepreneurial Activity* (2009), available at: <http://cobe.boisestate.edu/economics/files/2009/10/AirQualityRegsandEntrepreneurialActivity.pdf>.

substance and process would require "approximately one year" after a proposal is issued to review and respond to all of the comments on the proposed rule and prepare a final rule. However, the PM NAAQS rule was finalized less than 6 months after the first comments on the proposal were sought through publication of the proposed rule on June 26, 2012. Seeing that EPA received almost 230,000 comments on the proposed rule, what aspects of the PM NAAQS process became less complicated after Assistant Administrator McCarthy's statement so that EPA required less than half the amount of time she stated would be required to finalize the rule?

2. EPA's cost estimates are based on the notion that 99 percent of counties are already in compliance with the new PM standards. If the economy recovers and counties attract more manufacturing and industrial operations, is it possible that additional counties will be in nonattainment under the new PM NAAQS standard?
3. In its cost estimates, EPA excluded the costs states and localities will incur from the new NAAQS. These include costs for designing and implementing control strategies as well as for financial incentives offered to keep existing businesses in the newly designated nonattainment area and attract new businesses to these areas. EPA declined to consider these costs because of uncertainties. Based on existing data, could EPA develop a range of likely costs to state and local governments? How long would it take EPA to consult with states and localities affected by the new standards and gather the information necessary to estimate these costs with reasonable confidence?
4. EPA claimed that the PM NAAQS rule will deliver significant health benefits, but the RIA for the rule states that mortality estimates "omit the uncertainty in air quality estimates, baseline incidence rates, populations exposed, chemical composition, transferability of the effect estimate to diverse locations, and additional uncertainty around the mean estimates expressed by the experts."⁹ Why did EPA not include these uncertainties in the press statements surrounding the rule?¹⁰
5. The RIA for the final PM NAAQS mentions the thirteen (13) other rulemakings that claim PM benefits but makes no mention of the cumulative costs of these regulations. Did EPA conduct a cumulative cost analysis in order to determine if implementing all 13 rules simultaneously results in cumulative costs or redundant regulation as required by Executive Order 13563? If not conducted, why not?
6. The final rule includes significant changes to the modeling used to predict costs and benefits of the PM NAAQS rule. Why has EPA refused to submit the changes in methodology used by the final rule to public comment before finalizing the rule? Would the one year time-frame predicted by Assistant Administrator McCarthy allow for such comments?

⁹ RIA at ES-21.

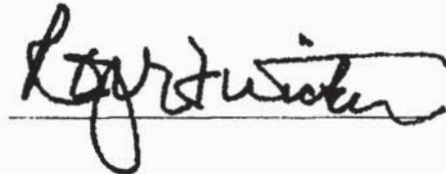
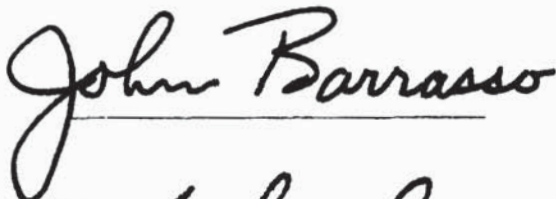
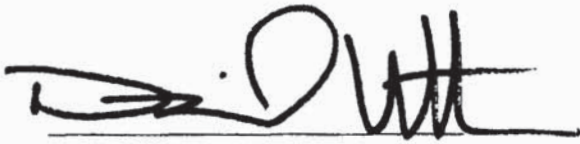
¹⁰ See

<http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/a7446ca9c228622b85257ad400644d82!OpenDocument>.

7. It appears that recent court decisions regarding the 1997 PM NAAQS may restrict the flexibility that EPA and states will have as they seek to implement the new PM NAAQS. How and to what extent do the recent court decisions change the likely cost of the new PM NAAQS?

Thank you for your prompt attention to this matter. If you have any questions please contact Margaret Caravelli with the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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February 5, 2013

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

On December 14, 2012, the Environmental Protection Agency (EPA) announced a new rule tightening the national ambient air quality standards (NAAQS) for fine particulate matter (PM_{2.5}). This is an economically significant regulation, and it is imperative that all federal rules and resulting costs are based on the best science, particularly during this time of slow economic recovery.

We believe there are serious questions that must be addressed before the new PM_{2.5} NAAQS should be implemented. For instance, we are concerned that EPA proceeded with finalization of these standards notwithstanding an ongoing federal investigation into the underlying science. As you are aware, on October 22, 2012, the EPA Office of Inspector General (OIG) announced that an investigation was underway to determine "whether EPA, as part of its research, followed applicable laws, regulations, policies, procedures, and guidance when it exposed human subjects to diesel exhaust emissions or concentrated airborne particles." EPA apparently conducted or oversaw (or contracted with other entities that have engaged in) human testing programs in an effort to study the impacts of PM_{2.5} on humans. As part of these experiments, the human subjects were required to sign a waiver that expressly stated that PM_{2.5} does not pose a serious health risk, even though EPA now contends in its final rule that PM_{2.5} exposure is deadly.

It is our understanding that the ongoing OIG investigation relates to data relied upon by EPA in its final PM_{2.5} rule. On page 69 of the final rule, EPA states, "As was true in the last two reviews, evidence from epidemiological, controlled human exposure and animal toxicological studies played a key role in the Integrated Science Assessment's evaluation of the scientific evidence." In other words, it appears that the human clinical studies being investigated by the OIG played a role in the analysis supporting EPA's determination.

Indeed, EPA's own standards for human testing require "the most up-to-date science and the highest ethical standards."¹ To the extent the relevant human exposure studies are determined by the OIG to have deviated from EPA protocol or were otherwise conducted in an improper or unlawful manner, the data cannot be relied upon for regulatory purposes as the "best

¹ USEPA Memorandum, *Ethical Requirements for Human Observational Exposure Studies Conducted and Supported by EPA* (Jan. 19, 2011), available at <http://www.epa.gov/ord/hum/documents/PTA-Ethical-Requirements-for-Human-Observational-Exposure-Studies-Conducted.pdf>.

available science," and it would seem equally clear that the PM_{2.5} rulemaking would need to be revisited. Notwithstanding the ongoing OIG investigation, EPA and the White House Office of Management & Budget rushed to finalize the new PM_{2.5} rule after the election without awaiting the OIG's determination.

It is a concern that EPA would assert in the rulemaking process that PM_{2.5} exposure is deadly while simultaneously asserting in the waivers signed by participants in EPA human exposure studies that these exposures are not harmful. Furthermore, there are valid questions about the quality or usefulness of the exposure studies actually relied upon by EPA. For instance, EPA states on page 282 of the final rule that "the most useful evidence for ... evaluating the distribution of health event data and the corresponding long-term mean PM_{2.5} concentrations" are short-term exposure studies like Zanobetti and Schwartz (2009) and Bell et al. (2008). However, neither of these studies uses mortality and air quality data more recent than 2005. Moreover, both studies rely upon a limited set of cities and counties, which were selected for unknown reasons. It appears that EPA has so far refused to use more contemporaneous and exhaustive data. For instance, we have recently learned that the California Department of Health has prepared death certificate data for the entire state for the period 1999-2010, and the 2011 mortality data is expected to be available very soon. EPA could, if it desired a comprehensive analysis of recent air quality data for PM_{2.5}, evaluate this California data to determine what relationship, if any, exists between PM_{2.5} and short-term mortality.

In light of these concerns, we respectfully request a written response from EPA detailing the agency's position with respect to the issues discussed above. We would also urge EPA to hold in abeyance implementation and enforcement of the new PM_{2.5} NAAQS until:

1. Completion of the OIG investigation and verification by the OIG that these studies complied fully with all applicable laws, regulations, and standards; and
2. Completion of a review of available data current through 2011, including a statistically- and scientifically-sound analysis of recent PM_{2.5} data for California in comparison to California death certificate analysis.

Air quality is significantly improving in the United States without this costly new regulation; in fact, PM_{2.5} levels have dropped dramatically over the past decade and good data suggests that this favorable trend will continue without EPA's new PM_{2.5} standard. Accordingly, we believe there would be no detrimental impact to public health and the environment as a result of granting this request.

Thank you for your kind attention to this matter. We look forward to your response.

Sincerely,



David Vitter
Ranking Member
Environment and Public Works


Jeff Sessions
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 03 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of February 5, 2013, co-signed by Senator Vitter, regarding implementation of the recently-revised national ambient air quality standards (NAAQS) for particulate matter (PM).

On December 14, 2012, the EPA took important steps to protect the health of Americans from fine particle pollution by strengthening the level of the primary annual standard for fine particles (PM_{2.5}) to 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and retaining the level of the 24-hour fine particle standard of 35 $\mu\text{g}/\text{m}^3$. The revised annual PM_{2.5} standard, which is consistent with the requirements of the Clean Air Act and the latest science, will provide increased public health protection from a range of serious adverse impacts, including premature death and harmful effects on the cardiovascular system, and decrease hospital admissions and emergency department visits for heart attacks, strokes and asthma attacks.

The EPA's final decisions reflect consideration of the strength of the available scientific information and its associated uncertainties, as well as the advice of the EPA's Clean Air Scientific Advisory Committee (CASAC) and consideration of extensive public comments. During this review of the PM standards, the EPA examined thousands of studies, including hundreds of new studies published since the EPA completed the last review of the PM standards in 2006. These include epidemiological, toxicological, and controlled human exposure clinical studies. They also include studies of visibility, climate and ecological effects as well as studies of atmospheric sciences and exposure. For example, the evidence includes more than 300 new epidemiological studies. These studies also include many large epidemiological studies showing fine particles have effects on health at lower ambient concentrations than previously observed.

Your letter identified concerns regarding the EPA's use of controlled human exposure studies that were referenced in the development of the PM NAAQS. These studies, which were conducted in response to a strong recommendation from the National Research Council, provide important information that helps the agency understand the biological effects of particle air pollution. It is important to emphasize, however, that while the controlled human exposure studies in question played a role in the evaluation of the strength of the causal relationship between exposure and health effects, the Administrator relied on evidence from the epidemiological studies in reaching the final decision on the four elements of the recently strengthened primary PM_{2.5} standard: level, form, averaging time and indicator.

The agency takes very seriously its commitment to use the best science, and that includes following the letter and spirit of all protocols and regulations surrounding human exposure research whether the

agency is funding studies through grants or conducting them directly. The EPA is one of 15 federal departments and agencies that conduct or support research with human subjects under the governance of the Federal Policy for the Protection of Human Subjects ("Common Rule"). The enclosure provides further information about the use of these studies in the scientific assessment for the 2012 PM NAAQS, as well as the way in which the studies are conducted and the strict safeguards that apply to them.

Your letter refers to the ongoing Office of Inspector General (OIG) investigation to evaluate the EPA's studies on human exposure to PM and requests that the EPA wait until the OIG completes its investigation before implementing the PM NAAQS. The enclosure provides information on the agency's compliance with the requirements and safeguards applicable to these studies. As explained above, the studies that are the subject of the OIG investigation did not provide information needed to revise any of the four elements of the recently strengthened primary PM_{2.5} standard; the specific information the Administrator relied upon to set the PM NAAQS was provided by epidemiological studies. The revised PM NAAQS is consistent with the strong, consensus advice of the CASAC, and the EPA has complied with all legal requirements in developing these standards. The agency has a nondiscretionary statutory duty to implement the newly revised standards and is proceeding in accordance with that duty.

In your letter, you also requested consideration of newly available mortality data from California. In accordance with the requirements of the Clean Air Act, the EPA will continue to review scientific information on the health effects of PM. Section 109(d) of the Clean Air Act requires the EPA to complete a review of the science upon which the NAAQS are based and the standards themselves at five year intervals. The NAAQS review process ensures that these public health standards are considered in light of new information and peer-reviewed scientific studies. Any newly available scientific information will be taken into consideration in the next review of the PM NAAQS.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in my office at 202-564-2095.

Sincerely,



Arvin Ganesan
Associate Administrator

Enclosure

Enclosure – Response to February 5, 2013, Letter from Senator David Vitter and Senator Jeff Sessions

The EPA uses a combination of large population (epidemiology), toxicology, and controlled human exposure research to inform the review of public health standards that lead to risk reduction, risk prevention, and treatment strategies and provide important scientific information for shaping policy to protect public health. For the PM NAAQS, the EPA used controlled human exposure studies (both those conducted by EPA, and those conducted by universities and other governmental entities) to better understand the biological mechanisms by which inhaling ambient air pollution particles can cause illness or death in susceptible individuals. This is consistent with the strong recommendation of the National Research Council of the National Academy of Sciences, which observed that “[c]ontrolled human exposure studies offer the opportunity to study small numbers of human subjects under carefully controlled exposure conditions and gain valuable insights into both the relative deposition of inhaled particles and the resulting health effects.”¹

Controlled human exposure studies help to provide an understanding of the biological pathways by which exposure to air particle pollution can lead to adverse health events, and, together with toxicological studies, can explain why statistical associations are so often found in epidemiological studies. Controlled human exposure studies also play a role in the evaluation of the strength of evidence supporting causal relationships between exposure and health effects in the EPA’s Integrated Science Assessments.² It is important to emphasize that the Administrator relied on evidence from the epidemiological studies in reaching the final decision on the four elements of the recently strengthened primary PM_{2.5} standard: level, form, averaging time and indicator.³

Human exposure studies conducted or supported by the EPA are required to comply with the substantive and procedural requirements of the government-wide Common Rule, which governs the scientific and ethical conduct of research with human subjects conducted or supported by the federal government.⁴ The Common Rule requires informed consent from study participants, approval of the proposed research by a special review body, minimization of risk to study participants, and a reasonable relationship between risks (if any), benefits, and the importance of the knowledge that may reasonably be expected to result.⁵

The EPA takes these requirements with the utmost seriousness. The EPA carefully screens the people who apply for studies to assure that they are healthy and not the type of susceptible individual who could be at greater risk from short-term exposure to PM_{2.5}. The EPA thoroughly informs participants of the risks associated with their participation by means of a written consent form and during extensive oral

¹ National Research Council of the National Academies of Science, “Research Priorities for Airborne Particulate Matter”, ISBN 0-309-09199-3 (2004).

² U.S. Environmental Protection Agency, “Integrated Science Assessment for Particulate Matter” (2009). Available at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2012-30946.pdf>.

³ See Section III of the PM NAAQS preamble (“Rationale for Final Decisions on the Primary PM_{2.5} Standards”), 78 Federal Register 3097-3182 (Jan. 15, 2013). Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?dcid=216546>.

⁴ See 40 CFR Part 26 (the EPA’s codification of the Common Rule). The EPA is one of 15 federal departments and agencies that conduct or support research with human subjects under the governance of the Federal Policy for the Protection of Human Subjects (“Common Rule”).

⁵ See 40 CFR section 26.111 (a).

interviews with each potential study participant. EPA researchers inform potential participants that they will be exposed to PM_{2.5}, how that will occur, and what tests will be performed to gauge their biological reactions. Prospective participants are informed that they will be exposed to levels comparable to those experienced in an urban area on a smoggy day. In fact, study participants are exposed over a two-hour period to PM_{2.5} concentrations that are *less* than they may experience on a very bad pollution day in a single hour in many counties in the US that attain the 24-hour and annual PM_{2.5} NAAQS. Prospective participants are further informed that everyone is exposed to PM_{2.5} in daily life and that while exposure has been associated at the population level with increased illness and death, there is minimal risk that they as an individual will experience any adverse health effects during their two hour exposure but that they may experience airway irritation, cough, shortness of breath, wheezing, and other temporary irritations.

During these studies, participants are monitored continuously, and the EPA also conducts follow-up monitoring. For example, participants are asked to wear a small recording device called a Holter monitor that documents their heart rate and rhythm for 18 hours. The participants return to the EPA the day following exposure and undergo a medical evaluation. They are provided with the contact telephone numbers of EPA researchers, the EPA approval officer (who oversees research protocols), and the Institutional Review Board (IRB) and asked to call any of these numbers if they have any questions or concerns.

Before beginning a study, an application is submitted to the University of North Carolina Institutional Review Board (IRB), an independent review panel which oversees all of the controlled human exposure studies conducted by EPA scientists and which makes an assessment of whether each study is in compliance with the Common Rule. The application includes a full description of the study design, methods and procedures, including the regimen by which each test participant will undergo exposures to clean air and to PM_{2.5}, and the biological endpoints to be studied. It also describes the risk of a participant experiencing an adverse effect while participating in a controlled exposure study. The University of North Carolina IRB has the distinction of full accreditation from the Association for the Accreditation of Human Research Protection Programs, which offers assurance – to research participants, researchers, sponsors, government regulators, and the general public – that a Human Research Protection Program is focused first and foremost on excellence including highest ethical standards and the safety of research participants. All of the controlled human exposure studies for PM_{2.5} conducted by the EPA have been approved by the IRB as in compliance with the Common Rule. The IRB has also consistently found that “[t]his research involves no more than minimal risk,”⁶ as have the IRBs of several Universities (e.g. U. Michigan, U. Rochester, UCLA, U. Washington) in which controlled exposure to air pollution particles are also performed.

Furthermore, the EPA has a more rigorous approval process, both procedurally and substantively, than is required by the Common Rule. Prior to submission to the IRB, the application is sent to two non-EPA researchers for scientific and safety review. After IRB approval, the EPA conducts further multi-level intra-agency review, including review by a quality assurance expert, a physician, the EPA Human Research Protocol Officer, the Director of the Environmental Public Health Division, the Associate Director for Health and culminating in the final review and approval by the EPA’s Human Subjects Research Review Official as to whether the study meets all requirements of the Common Rule. In addition, the EPA seeks to assure not only that risks to study participants “are minimized” as required by the Common Rule, but minimal as well. Thus, the EPA only does PM and other air pollution studies if

⁶ See, e.g. IRB Approval letter of November 11, 2011.

effects on test subjects will be (at most) mild, transient, and reversible, and if there is prior data from one or more of the following types of research: testing in animals; observational research involving only naturally occurring human exposures; human studies involving a closely related air pollutant. The EPA excludes from PM studies persons with a history of angina, cardiac, arrhythmias, and ischemic myocardial infarction or bypass surgery, and well as people using pacemakers. The EPA also excludes people with enumerated non-degenerative diseases and chronic illnesses.

Finally, the EPA's language on the informed consent forms presented to controlled human subject study participants is entirely consistent with the description of the effects associated with exposure to $PM_{2.5}$ in the PM NAAQS, including that PM exposure is associated with serious health effects, including premature mortality. Although there is a risk of a serious impact on public health when a large population (hundreds of millions) containing people with significant risk factors, such as pre-existing cardiovascular disease, is exposed to elevated ambient concentrations of $PM_{2.5}$, the risk of a serious effect to any one study participant exposed to $PM_{2.5}$ for a period of two hours to concentrations typically observed during a high particle pollution day under controlled conditions is very small.

12-001-3027

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

August 3, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, DC 20460

Dear Administrator Jackson:

We are concerned by the Environmental Protection Agency's (EPA) use of the Integrated Risk Information System (IRIS) to assess halogenated platinum salts (HPS). It is our belief that EPA is using the IRIS assessment program to address a specific application that IRIS is unsuited to address – to inform EPA's evaluation of platinum fuel additives for diesel engines in EPA's diesel program – unnecessarily threatening the production of platinum and products containing platinum. Adequate authority to address any concerns the Agency might have with approved fuel additives already exists within the Clean Air Act.

Specifically, the Draft Risk Assessment of Halogenated Platinum Salts and Compounds establishes a Reference Concentration (RfC) 8000 times below any RfC ever set by EPA – a level impossible to measure accurately. The RfC is not based on sound science and relies primarily on a single study so limited that even the study's author has rejected it repeatedly as a basis for setting an exposure threshold. Additionally, the Scientific Committee for Occupational Exposure Limits of the European Union also rejected the study as unsuitable for setting exposure limits. Further research is underway to expand the knowledge of exposure and measurement and will provide a much more significant database upon which EPA and others can make scientific judgments – which can only enhance EPA's efforts to improve the transparency, quality, and utility of the Agency's work.

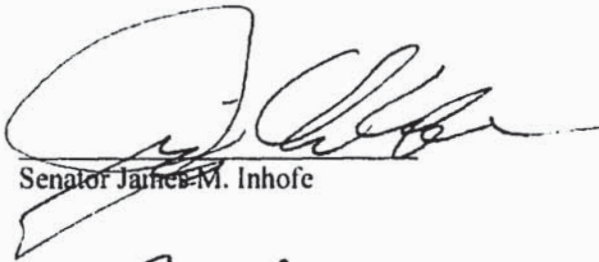
The RfC, if allowed to stand, will likely result in off-shoring parts of the platinum industry, resulting in elimination of jobs, significant loss of tax revenue, and delay of future technological investments and growth. Platinum compounds are integral to production of nitrogen fertilizer and production of anti-cancer drugs, medical devices, and over-the-counter medications such as acetaminophen. Platinum is also essential for petroleum refining and the production of high-octane gasoline, a loss of which would limit the ability of automobile manufacturers to meet future CAFE standards. Moreover, one of the greatest benefits derived from platinum has been in the deployment of catalytic converters for automobiles and heavy-duty engines, providing a 90 percent reduction in vehicle emissions.

EPA must not inadvertently risk the fruits of the U.S. platinum industry through an inappropriate IRIS assessment and subsequent RfC threshold establishment. Even if such an assessment were the only tool available to EPA to address its concern over the fuel additive, the Agency must

develop a risk value grounded in sound science – once that can be met and measured with a sufficient degree of certainty. Those standards have not been met in this instance.

We strongly urge you to reconsider your plans to issue the final IRIS assessment of halogenated platinum salts and compounds. Concerns over adverse consequences from emissions exposures from platinum-based fuel additives should be address by other means, such as EPA's existing authority under the Clean Air Act. We believe it is essential to withdraw the proposal and revise it when new data from the aforementioned research efforts become available in 2013.

Sincerely,



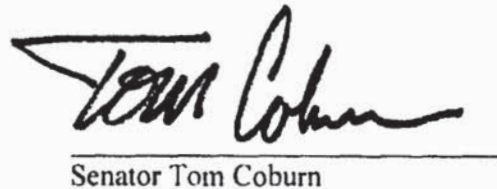
Senator James M. Inhofe



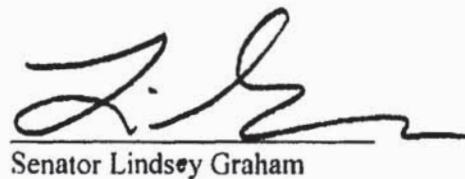
Senator David Vitter



Senator Jeff Sessions



Senator Tom Coburn



Senator Lindsey Graham



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 17 2013

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your letter dated August 3, 2012, to the U.S. Environmental Protection Agency (EPA) regarding the draft Integrated Risk Information System (IRIS) assessment of halogenated platinum salts. Because the Office of Research and Development is responsible for the IRIS Program, your letter was referred to me for response.

In your letter, you expressed concern regarding how the draft IRIS assessment of halogenated platinum salts, once final, will be used. The EPA began an assessment of the potential human health effects of halogenated platinum salts in order to address questions focused on the use of a platinum fuel additive in some clean diesel projects under the Diesel Emission Reduction Act. The EPA has since removed the platinum fuel additive from the list of registered additives for use in on-road diesel vehicles. Because of this, the agency no longer has a need for the IRIS assessment of halogenated platinum salts.

Again, thank you for your interest in the IRIS Program and its draft IRIS assessment of halogenated platinum salts. If you have further questions, please contact me or your staff may contact Laura Gomez in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-5736.

Sincerely,

A handwritten signature in black ink, appearing to read "Lek Kadeli", is positioned above the printed name.

Lek Kadeli

Principal Deputy Assistant Administrator

United States Senate

WASHINGTON, DC 20510

13-000-6332

June 4, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Director Perciasepe:

The Environmental Protection Agency (EPA) released farm information for 80,000 livestock facilities in 30 states as the result of a Freedom of Information Act (FOIA) request from national environmental organizations. It is our understanding that the initial release of data contained personal information that was not required by the FOIA request for ten states including Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio and Utah. This release included names and personal addresses. EPA redacted the initial data and resent the data only to realize they had again sent out personal information for Montana and Nebraska.

We are writing today to express concern regarding the sensitivity of the data that was released. Unlike most regulated facilities, farms and ranches are also homes and information regarding these facilities should be treated and released with that understanding. We also understand there are additional concerns regarding biosecurity and the safety of our food supply. It is our expectation that EPA will conduct a thorough review of their FOIA policies in relation to sensitive agriculture producer data.

Finally, we have several outstanding questions regarding the data that was released and your process.

1. When EPA proposed making similar data available last year through the National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, the Department of Homeland Security and the Department of Agriculture expressed concern due to the biosecurity and producer security implications. This proposal was later withdrawn. Since these agencies have been engaged on the issue in the past, did the EPA consult with the Department of Agriculture or the Department of Homeland Security at any point throughout this process?
2. We understand that some of the livestock operations whose data was released did not meet the threshold to be qualified as a CAFO. Under what authority did you release this data? Did the FOIA specifically request this data? If not, why was this data released and why was this information not redacted with the other unnecessary data? Why did EPA collect data on small farmers under the CAFO threshold in the first place? What environmental concern does the EPA have that justifies collecting data on farmers who may only have a few animals? As an example, the information EPA compiled on Iowa farmers included the information on an individual who had one pig, and another

individual who had 12 horses. These are just two examples of individuals included in the 80,000 farms that have only a few animals; there are examples in other states of this type of data collection as well. What purpose is served in collecting data on people who only have a few animals?

3. What does the EPA plan to do in the future to ensure that agricultural data is protected?

Thank you for your attention to this matter, we look forward to your response.

Sincerely,

Debbie Stierow

Chuck Grassley

Joe Donnelly

Don Cook

Al Franken

Pat Roberts

John Boozman

Amy Klobuchar

Max Baucus

Joe Stump

Tammy Baldwin

Mike Crapo

Jon Kyl

Thad Cochran

Tom Hahn

Sayby Chaublin

Kay R. Hagan

Wm F. R. +

John Barrasso

Jay L. Snow

Rob Stanton

Michael B. Eji

Kay Bend

James J. ...



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 15 2013

OFFICE OF WATER

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of June 4, 2013, to the U.S. Environmental Protection Agency expressing concerns about the EPA's recent release of data on concentrated animal feeding operations pursuant to the Freedom of Information Act.

The EPA treats with utmost seriousness the importance of protecting the privacy of Americans recognized by the FOIA, the Privacy Act, and the EPA's Privacy Policy. In recognition of the concerns raised by the animal agricultural industry, the EPA engaged in an exhaustive review of the EPA's FOIA response to determine whether, as the agency had understood, the information the EPA released is publicly available, and whether any revisions to the agency's determination to release the information is warranted under the privacy exemption (Exemption 6) of the FOIA.

As a result of this comprehensive review, we have determined that, of the twenty-nine states¹ for which the EPA released information, all of the information from nineteen of the states is either available to the public on the EPA's or states' websites, is subject to mandatory disclosure under state or federal law, or does not contain data that implicated a privacy interest. The data from these nineteen states is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. The EPA has determined that some personal information received from the ten remaining states² is subject to Exemption 6.

The EPA has thoroughly evaluated every data element from each of these ten states and concluded that personal information – i.e., personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters – implicates a privacy interest that outweighs any public interest in disclosure.

We amended our FOIA response to redact portions of the data provided by these ten states. The redacted portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations, in order to serve the public interest of ensuring that the EPA effectively

¹ The twenty-nine states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

² The ten remaining states are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.

implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

The EPA has delivered the amended data to the FOIA requestors, and has also provided copies to representatives of the animal agricultural industry. In addition, EPA requested that the previous data releases be returned to the agency, and all original requestors subsequently complied with this request. The agency has asked agricultural stakeholder groups to report to the EPA if any activities happen on their farms that they believe directly resulted from this FOIA release.

The information that was released pursuant to the FOIA requests contained information on both AFOs and CAFOs. Though the EPA's request to states only pertained to information on permitted and unpermitted CAFOs, some states also provided information on additional animal feeding operations. Animal feeding operations are defined differently by the EPA and by each individual state. For instance, sometimes the term AFO is used to mean all livestock operations regardless of size, and sometimes it is used to mean only small operations. Similarly, sometimes the term CAFO is used to mean all livestock operations regardless of size, and sometimes it is used to mean only large operations that meet federal animal unit thresholds.

Our understanding was that the FOIA requestors were asking us for all of the releasable animal feeding operation information the agency had collected from the states regardless of how the EPA or the states would categorize it. Accordingly, the EPA gave the requestors all the releasable data the states gave the agency. One FOIA request stated "all records relating to and/or identifying sources of information about CAFOs, including the AFOs themselves, and the EPA's proposed and intended data collection process for gathering that information."³ Two other FOIA requests stated "all records...relating to EPA's withdrawal of the proposed NPDES CAFO Reporting Rule...", including, "any records providing factual information concerning the completeness, accuracy, and public accessibility of states CAFO information..."⁴

As your letter reflects, the EPA initially proposed a rule that would have required CAFO owners to submit information about their operations to the agency. As part of the inter-agency review process, the U.S. Departments of Homeland Security (DHS) and Agriculture (USDA) provided comments to the proposed collection rule. It is through this inter-agency process that the EPA engaged with both DHS and USDA.

The agency is working to ensure that any future FOIA requests for similar information are reviewed carefully to ensure that privacy-related information is protected to the extent required by FOIA. More specifically, key leaders in our Office of Environmental Information and FOIA experts are developing training for all agency employees, including those in the Office of Water (OW), on the agency's obligations under the FOIA and responding to FOIA requestors. The training will focus on all aspects of processing a FOIA request, including how to properly safeguard information that may be exempt from mandatory disclosures, and will become a regular practice to agency personnel.

³ FOIA request from Eve Gartner of Earthjustice. Dated September 11, 2012

⁴ FOIA request from Jon Devine of NRDC and Karen Steuer of Pew. Dated October 24, 2012

Again, thank you for your letter. The EPA is committed to conducting its activities with the highest legal and ethical standards and in the public interest. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized, looping flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

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13-000-4901

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RETTINA POIRRELL, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

April 1, 2013

The Honorable Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Assistant Administrator McCarthy:

We are writing to express concerns with your February 12, 2013, proposed rule, "Startup, Shutdown, and Malfunction: Proposed Response to Petition for Rulemaking, Findings of Inadequacy, and Call for Plan Revisions." We find this proposed rule deeply flawed for several reasons.

First, this is the latest in a series of rulemakings initiated by this Administration in response to so-called "sue and settle" agreements with special interest groups. In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstances under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency.

Second, EPA's new approach, embodied in the SSM proposal, contravenes four decades of prior EPA practice. The SSM exemption has been approved by EPA since 1972 and has been a key element of most EPA-approved State Implementation Plans (SIPs). In fact, EPA has included SSM exemptions in EPA's own standards, including the New Source Performance Standards, for decades. Notwithstanding 40 years of precedent to the contrary, EPA has now decided that the SIPs of 36 states are legally inadequate because of their SSM provisions.

Third, EPA aims to command by federal edict that 36 States submit revised SIPs for EPA review and approval. This approach—confounded by “sue and settle” style tactics—blatantly ignores the proper role of the States and EPA under the Clean Air Act’s cooperative federalism structure. The U.S. Court of Appeals for the D.C. Circuit recently explained the primary role of the States when it invalidated EPA’s Cross State Air Pollution Rule (which likewise sought to override the States):

To deal with [the Clean Air Act’s] complex regulatory challenge, Congress did not authorize EPA to simply adopt limits on emissions as EPA deemed reasonable. Rather, Congress set up a federalism-based system of air pollution control. Under this cooperative federalism approach, both the Federal Government and the States play significant roles. The Federal Government sets air quality standards for pollutants. The States have the primary responsibility for determining how to meet those standards and regulating sources within their borders.

Eme Homer City Generation v. EPA, 696 F.3d 7, 11 (D.C. Cir. 2012) (emphasis added). Likewise, as the Fifth Circuit has long recognized, “The great flexibility accorded the states under the Clean Air Act is [...] illustrated by the sharply contrasting, narrow role to be played by the EPA.” Fla. Power & Light Co. v. Costle, 650 F.2d 579, 587 (5th Cir. 1981). EPA’s latest proposal on SSM exemptions would suggest that EPA believes the States have been relegated to mere regional offices of the EPA. See U.S. Const. amend. X (“powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

Finally, we find unacceptable the unreasonably brief time period for public comments on the SSM proposal. EPA is allowing just 30 days for public comment and, if requested, just one public hearing—in Washington, DC. More time is required for a proposal changing four decades of EPA precedent and the SIPs of 36 states. We have heard rumors of a short extension, but we would ask that, at a minimum, EPA grant an extension of the public comment period to at least 120 days, as requested by the Attorneys General of seventeen states (including Alabama and Louisiana) in a letter to you dated March 15, 2013.

In light of these concerns, we request an immediate response to the following questions with a simple “yes” or “no” answer:

1. Will EPA provide all records, electronic or otherwise, of meetings, conversations, e-mails, letters, or other communications or other documents in EPA’s possession referring or relating to the Sierra Club SSM petition and settlement agreement?
2. Did EPA or any other federal entity make any payments, for attorneys’ fees or otherwise, to the Sierra Club in relation to the above-referenced litigation or settlement agreement?

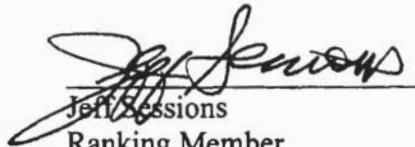
3. Did EPA invite the States to participate in the settlement discussions with the Sierra Club in this matter?
4. Did EPA amend the settlement agreement in December 2012 to require that "EPA shall confer with counsel for Sierra Club concerning the Agency's progress towards meeting these obligations"?
5. Did EPA amend the settlement agreement to require that EPA or Sierra Club confer with the affected States concerning the settlement?
6. Did EPA invite the States to review the draft settlement agreement with the Sierra Club?
7. In a letter dated March 15, 2013, the Attorneys General of seventeen States requested that the public comment period for the SSM proposed rule be extended by a minimum of 120-days from February 22, 2013. We believe this request should be granted. Will EPA grant this request?
8. In a letter dated August 10, 2012, the Attorneys General of thirteen States requested, pursuant to the Freedom of Information Act, documents concerning, among other things, recent Clean Air Act settlements with non-governmental organizations. Will EPA provide the requested documents?

Your kind attention to this important matter is greatly appreciated.

Sincerely,



David Vitter
Ranking Member
Senate Committee on Environment
& Public Works



Jeff Sessions
Ranking Member
Senate Subcommittee on Clean Air
& Nuclear Safety



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Jeff Sessions
Ranking Member
Subcommittee on Clean Air and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington DC 20510

Dear Senator Sessions:

Thank you for your letter of April 1, 2013, regarding the EPA's proposed Startup, Shutdown, and Malfunction rule related to State Implementation Plans (SIP). This proposal, published in the Federal Register on February 22, 2013, would ensure that states have plans in place that require industrial facilities across the country correctly meet Clean Air Act requirements during times when the facility is starting up or shutting down, or when a malfunction occurs.

The EPA's proposed actions would address outdated provisions in state implementation plans (SIPs), improve national consistency, and provide clarity for the treatment of emissions that occur during startup, shutdown, and malfunction (SSM). Air pollution emitted during these periods may adversely impact the health of people nearby and contribute to smog and other problems in communities that are further downwind.

This proposal is consistent with the EPA's longstanding interpretation of the requirements of the Clean Air Act for SIP provisions. States have known for some time that certain types of SSM provisions in their SIPs were not in compliance with the Clean Air Act and that the EPA would need to address those provisions. The Sierra Club filed a petition requesting that we examine the issue and requesting that the EPA issue an error correction or issue a SIP Call to states with deficient SIP provisions.

In response to the petition, the EPA issued the proposed rule to clarify and update the SSM policy and to identify state provisions we believe are in conflict with the Clean Air Act. The EPA proposed findings that specific SSM provisions in the SIPs of 36 states do not meet the requirements of the Clean Air Act. Where EPA disagrees with the requests in the Sierra Club petition, the EPA has proposed to deny the petition. After a public comment period, we will finalize the rule which will, if finalized as proposed, start an 18-month clock for states to make SIP submissions to fix any SIP deficiencies we confirm in our final action.

Responses to your eight questions are included as an enclosure to this letter.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Josh Lewis in my office at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvin Ganesan', written in a cursive style.

Arvin Ganesan
Associate Administrator

Enclosure

6. Did EPA invite the States to review the draft settlement agreement with the Sierra Club?

Response: Before agreeing to the settlement, the EPA published a notice in the Federal Register describing the proposed agreement and the petition, and requesting comment on the proposed settlement. The EPA did not receive any comments opposed to the obligation in the proposed settlement agreement for EPA action on the Sierra Club petition. The only adverse comment on the proposed settlement agreement was from Alabama, which said that the deadline for EPA action on the Sierra Club petition should have been longer.

7. In a letter dated March 15, 2013, the Attorneys General of seventeen States requested that the public comment period for the SSM proposed rule be extended by a minimum of 120 days from February 22, 2013. We believe this request should be granted. Will EPA grant this request?

Response: The EPA extended the public comment period by 30 days, to May 13, 2013. The proposed SSM rulemaking was signed on February 12, 2013, posted on the EPA's website on February 13, 2013, and was published in the Federal Register on February 22, 2013, which means commenters will have had almost three months to review the proposal. We believe this is sufficient time for public comment, particularly since the specific issues raised by the petition and the specific SIP provisions alleged to be deficient were identified publicly in the Sierra Club petition in 2011 and the EPA has communicated with state environmental agencies throughout the development of the proposed rulemaking.

8. In a letter dated August 10, 2012, the Attorneys General of thirteen States requested, pursuant to the Freedom of Information Act, documents concerning, among other things, recent Clean Air Act settlements with non-governmental organizations. Will EPA provide the requested documents?

Response: The EPA responded to an August 10, 2012 request from 13 state attorneys general for all records related to discussions with organizations about a broad array of EPA actions and authorities (designated HQ-FOI-01841-12) on August 21, 2012, and on September 14, 2012. The EPA's first response was a denial of the fee waiver sought by the requesters. The EPA then sought to develop a fee estimate for the request but found such an estimate to be impossible based on the requesters' description of the documents sought. The EPA's September 14, 2012, response explained that the incoming request failed to adequately describe the records sought as required by 40 C.F.R. §2.102(c), and invited the requesters to contact the agency to discuss scope modifications. The EPA received a very similar request February 20, 2013, which is designated HQ-2013-003886, and is currently on hold as the agency works to resolve the requesters' appeal of the agency's initial denial of their fee waiver request.

Enclosure: Responses to Questions Included in April 1, 2013, Letter from Senator Vitter and Senator Sessions

1. Will EPA provide all records, electronic or otherwise, of meetings, conversations, e-mails, letters, or other communications or other documents in EPA's possession referring or relating to the Sierra Club SSM petition and settlement agreement?

Response: The EPA is collecting potentially responsive documents in response to other inquiries and we will work with your staff to respond appropriately to this request.

2. Did EPA or any other federal entity make any payments, for attorneys' fees or otherwise, to the Sierra Club in relation to the above-referenced litigation or settlement agreement?

Response: As required by statute, fees were paid by DOJ on the EPA's behalf consistent with the agency's obligations under the Clean Air Act.

3. Did EPA invite the States to participate in the settlement discussions with the Sierra Club in this matter?

Response: The EPA engaged in an open and transparent process before deciding whether to enter the settlement agreement. No states sought to intervene in the litigation. Before agreeing to the settlement, the EPA published a notice in the Federal Register describing the proposed agreement and the petition, and requesting comment on the proposed settlement. The EPA did not receive any comments opposed to the obligation in the proposed settlement agreement for EPA action on the Sierra Club petition. The only adverse comment on the proposed settlement agreement was from Alabama, which said that the deadline for EPA action on the Sierra Club petition should have been longer.

4. Did EPA amend the settlement agreement in December 2012 to require that "EPA shall confer with counsel for Sierra Club concerning the Agency's progress towards meeting these obligations"?

Response: In exchange for receiving an extension to the otherwise applicable deadline in the settlement agreement, the EPA agreed to inform Sierra Club counsel on our progress towards complying with the extended deadlines in the amended settlement agreement. The EPA did not agree to confer with Sierra Club regarding the substance of the proposed SSM rulemaking.

5. Did EPA amend the settlement agreement to require that EPA or Sierra Club confer with the affected States concerning the settlement?

Response: During the development of the startup, shutdown, and malfunction (SSM) rulemaking, the EPA has communicated frequently with the states about the substance of the Sierra Club petition and the proposed SSM rulemaking. These communications are not required by the settlement agreement.

The Honorable Barack Obama

April 9, 2014


Page 2 of 2

mandatory procedures. EPA and the Corps' decision to proceed despite the numerous concerns identified by lawmakers and stakeholders is incredibly disappointing.

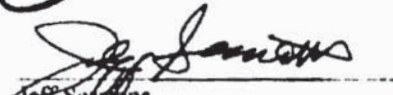
The scope of CWA jurisdiction is one of the most important regulatory issues facing landowners, businesses, and municipalities today. Although EPA and the Corps may have a role in clarifying and limiting CWA jurisdiction, unfortunately the agencies' rule proposal was a significant step in the wrong direction. The decision to move forward with this proposal is a clear breach of your promise to cut through red tape.³ In light of other recent CWA permitting decisions that have occurred during your administration, moving forward with the proposed rule will exponentially frustrate economic activity and further undermine notions of certainty in the federal permitting process.

Sincerely,

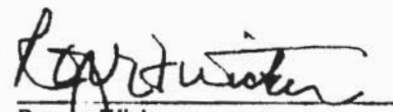

David Vitter
U.S. Senator


John Barrasso
U.S. Senator


James M. Inhofe
U.S. Senator


Jeff Sessions
U.S. Senator


Mike Crapo
U.S. Senator


Roger Wicker
U.S. Senator


John Boozman
U.S. Senator


Deb Fischer
U.S. Senator

³ Exec. Order No. 13563, 76 Fed. Reg. 3,821 (Jan. 18, 2011).



NOV 17 2014



The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your April 9, 2014, letter to President Barack Obama regarding the U.S. Department of the Army's and the U.S. Environmental Protection Agency's (EPA) proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current notice and comment rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

We appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. We are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

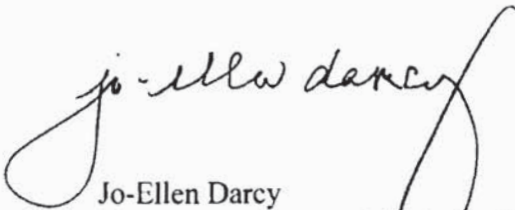
During the public comment period, the agencies are meeting with stakeholders across the country to facilitate their input on the proposed rule. We are talking with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. The EPA recently conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps have conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter to President Obama. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact us if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836, or Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at charles.r.smith567.civ@mail.mil or (703) 693-3655.

Sincerely,



Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
U.S. Department of the Army



Kenneth J. Kopocis
Deputy Assistant Administrator for Water
U.S. Environmental Protection Agency



11-000-2719

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 01 2011

OFFICE OF
CHIEF FINANCIAL OFFICER

The Honorable Jeff Sessions
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

On behalf of the Environmental Protection Agency (EPA), I am pleased to enclose the *FY 2011-2015 Strategic Plan*. A pre-publication version was formally transmitted to the Congress on September 30, 2010, as required by the Government Performance and Results Act of 1993 (GPRA).

EPA's *FY 2011-2015 Strategic Plan* provides a blueprint for accomplishing our priorities for the next five years. This *Plan* presents five strategic goals for advancing our environmental and human health mission outcomes accompanied by five cross-cutting fundamental strategies that set expectations for how the Agency works to achieve these goals.

This *Plan* sets forth our vision and commitment to protect human health and to preserve the environment for future generations as we undertake the important work that lies ahead. We will continue to work closely with the Congress as we implement the GPRA Modernization Act of 2010 to sustain attention on our priorities and achieve measurable results.

If you have questions regarding this *Plan* or would like additional copies, please have your staff contact Clara Jones in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701 or jones.clara@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara J. Bennett", is written over the typed name.

Barbara J. Bennett
Chief Financial Officer

Enclosure



U.S. ENVIRONMENTAL PROTECTION AGENCY

FY 2011–2015 EPA Strategic Plan

Achieving
Our Vision



EPA's Mission:
To Protect Human Health and the Environment

Strategic Goals

Goal 1: Taking Action on Climate Change and Improving Air Quality

Goal 2: Protecting America's Waters

Goal 3: Cleaning Up Communities and Advancing Sustainable Development

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution

Goal 5: Enforcing Environmental Laws

Cross-Cutting Fundamental Strategies

Expanding the Conversation on Environmentalism

Working for Environmental Justice and Children's Health

Advancing Science, Research, and Technological Innovation

Strengthening State, Tribal, and International Partnerships

Strengthening EPA's Workforce and Capabilities

Core Values:

Science, Transparency, Rule of Law

Fiscal Year 2011–2015 EPA Strategic Plan

Achieving Our Vision

U.S. Environmental Protection Agency
September 30, 2010

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Message from the Administrator

Since beginning my tenure as Administrator of the U.S. Environmental Protection Agency, I have been challenged by the difficult issues we face and inspired by the talent and dedication of our extraordinary work force. There is no doubt the EPA is on the job. We have made exceptional progress in protecting the environment of America's communities and restoring the trust of the American people. And we have made a number of historic environmental advances along the way. The year 2010 marks the EPA's 40th anniversary. It is a moment of celebration but also a time when we face some of the most complex and far-reaching environmental challenges in the history of the EPA, our nation and our planet. It is critical that we work harder and look further ahead.

The EPA's FY 2011–2015 *Strategic Plan* provides a blueprint for accomplishing our priorities for the next five years. This plan presents five strategic goals for advancing our environmental and human-health mission outcomes, accompanied by five cross-cutting fundamental strategies that seek to focus the EPA's work to meet the growing environmental protection needs of the day. To follow the Administration's focus on strengthening programs and achieving results, the EPA is implementing near-term Priority Goals that serve as key indicators of progress toward our five strategic goals. We will continue to affirm the core values of science, transparency and the rule of law in addressing these priorities. These are the most urgent issues we must confront through 2015.

As we prepared this strategic plan, we also were responding to one of the nation's worst environmental disasters, the Deepwater Horizon BP oil spill, which seriously affected the ecological and economic health of the Gulf Coast's communities. A sustained, effective recovery and restoration effort will require significant commitments of resources, scientific and technical expertise and coordination with a range of partners in the months and years ahead. This strategic plan offers a solid foundation for the EPA's long-term response to the impacts of the BP oil spill. As President Obama has said, our government will do "everything in our power to protect our natural resources, compensate those who have been harmed, rebuild what has been damaged, and help this region persevere like it has done so many times before." The EPA will work tirelessly to address the environmental and human-health effects and set the Gulf Coast on the path to recovery.

The EPA's Strategic Goals

Taking Action on Climate Change and Improving Air Quality: America's communities face serious health and environmental challenges from air pollution and the growing effects of climate change. During my first year as Administrator, the EPA finalized an endangerment finding on greenhouse gases, proposed the first national rules to reduce greenhouse-gas emissions under the Clean Air Act and initiated a national reporting system for greenhouse-gas emissions. All of these advances signaled historic progress in the fight against climate change. Climate change must be considered and integrated into all aspects of our work. While the EPA stands ready to help Congress craft strong, science-based climate legislation that addresses the spectrum of issues, we will assess and develop regulatory tools as warranted under law using the authority of the Clean Air Act.

We have strengthened the ambient air-quality standards for nitrogen dioxide and sulfur dioxide and proposed stronger standards for ozone, which will help millions of Americans breathe easier and lead healthier lives. We also are developing a comprehensive strategy for a cleaner and more efficient power sector, with strong and achievable emission-reduction goals for sulfur dioxide, nitrogen oxide, mercury and other air toxics. Strengthening the ambient air-quality standards consistent with the latest scientific information and gaining additional reductions in air toxics from a range of industrial facilities will significantly improve air quality and reduce risks to communities across the country. Improved monitoring, timely and thorough permitting and vigorous enforcement are our key tools for air-quality improvement.

Protecting America's Waters: Despite considerable progress, America's waters remain imperiled. From nutrient loadings and stormwater runoff to invasive species and drinking-water contaminants, water quality and enforcement programs face complex challenges that demand both traditional and innovative strategies. We will work hand-in-hand with states and tribes to develop nutrient limits and intensify our work to restore and protect the quality of the nation's streams, rivers, lakes, bays, oceans and aquifers. The EPA also will use its authority to protect and restore threatened natural treasures such as the Great Lakes, the Chesapeake Bay and the Gulf of Mexico; to address our neglected urban rivers; to ensure safe drinking water; and to reduce pollution from nonpoint and industrial dischargers. We will initiate measures to address post-construction runoff, water-quality impairments from surface mining and drinking-water contamination.

Cleaning Up Communities and Advancing Sustainable Development: Using all the tools at our disposal, including targeted enforcement and compliance efforts, the EPA will continue to make our communities safer and healthier. We are accelerating these efforts through our Superfund program to confront significant local environmental challenges. The collapse of a coal-ash impoundment in Kingston, Tenn, focused the EPA's attention on how these disposal facilities are managed nationwide. In response, the EPA proposed options for the nation's first rules to address the risks from the disposal of coal ash generated by coal-fired power plants. By maximizing the potential of our brownfields program to spur environmental cleanups and by fostering stronger partnerships with stakeholders affected by our cleanups, we are moving toward our goal of building sustainable, healthy, economically vibrant communities. And by strengthening our work with tribal communities, we are advancing our efforts to build environmental-management capacity and program implementation in Indian country.

Ensuring the Safety of Chemicals and Preventing Pollution: One of our highest priorities is ensuring the safety of the chemicals that make up the building blocks of modern society. Increasingly, the chemicals used to make our products, build our homes and support our way of life end up in the environment and in our bodies. Last year, the Administration announced principles for modernizing the more than 30-year-old Toxic Substances Control Act, under which we assess and regulate chemicals. To move forward and to make long-overdue progress, we are shifting our focus to filling in critical missing information on the chemicals most widely produced and used in commerce and addressing chemicals that pose unreasonable risk to the environment or human health. Pending legislative action by Congress, the EPA is strengthening its chemical safety program by coordinating with appropriate federal agencies to maximize use of current TSCA authorities, supported by the best available science, to aggressively assess and manage the risks of chemicals used in consumer products, the workplace and the environment. Additionally, under the Federal Insecticide, Fungicide, and Rodenticide Act, the EPA and the states register or license pesticides for use in the U.S. The EPA also is taking steps to increase transparency and public access to TSCA-related chemical information, committing to review and, where appropriate, to challenge and declassify Confidential Business Information claims for hundreds of annual new submissions and more than 20,000 previous submissions through FY 2015. By encouraging pollution prevention, we will promote the use of safer chemical alternatives, implement conservation techniques, promote efficient reuse of materials and better align the chemical-production processes with the principles of green chemistry.

Enforcing Environmental Laws: Effective, consistent enforcement is critical to achieving the human-health and environmental benefits expected from our environmental laws. The EPA, through the rule of law, will

ensure compliance with environmental requirements and, as warranted, will employ vigorous and targeted civil and criminal enforcement. We will achieve significant environmental results by focusing our efforts on the most serious water, air and chemical hazards and by working closely with states and tribes. We will protect the public by criminally prosecuting willful, intentional and serious violations of federal environmental laws.

The EPA's Cross-Cutting Fundamental Strategies

As a companion to our strategic goals, which chart the Agency's direction for achieving mission results during the next five years, the EPA's five cross-cutting fundamental strategies set explicit expectations for changing the way we approach our work. These five strategies will inform the work of every program and regional office and help us meet the challenges we face today.

Expanding the Conversation on Environmentalism: Every American has a stake in clean air and water, chemical safety, restoring contaminated industrial and mining sites and strong enforcement of environmental statutes. Every community must be part of the conversation. We will take broad steps to expand the conversation on environmentalism to communities across America, building capacity, increasing transparency and listening to the public. We will engage citizens to hear all the voices that must be part of our nation's dialogue on environmental issues.

Working for Environmental Justice and Children's Health: We will work alongside entities that bear important responsibilities for the day-to-day mission of environmental protection and strengthen oversight to ensure programs are consistently delivered nationwide. We will use a variety of approaches, including regulations, enforcement, research, community-based programs and outreach to protect children and low-income, minority and tribal populations disproportionately impacted by environmental and human-health hazards.

Advancing Science, Research and Technological Innovation: The EPA will advance the scientific research and technological innovation that is essential to enhancing our ability to protect human health and the environment.

Strengthening State, Tribal and International Partnerships: We will strengthen partnerships with states, tribes and the international community. Hand-in-hand with these partnership efforts and inclusive environmentalism, we will address pollution problems and protect human health.

Strengthening the EPA's Work Force and Capabilities: We will adopt improved, innovative and creative management approaches and exemplify stewardship, transparency and accountability in addressing increasingly complex environmental and human-health challenges. We will foster a culture of excellence and provide the infrastructure, technology, training and tools to support a talented, diverse, and highly motivated work force that supports the Administration's human capital and acquisition priorities.

Forty years after the birth of the EPA, we have a rare opportunity to spark a new era of environmental and human-health protection. The American people and countries around the world look to us for leadership. It is up to us to embrace this moment, so our children and grandchildren can have a cleaner, healthier future. We will face new challenges, new opportunities and new possibilities for achieving our vision of a cleaner, greener and more sustainable environment. I have tremendous confidence in the talent and spirit of our work force, and I know we will meet our challenges head-on, as One EPA. Fueled by our energy, our ideas, and our passion, this strategic plan will help guide our path to success.



Lisa P. Jackson

Introduction

Recent events in the Gulf Coast region and elsewhere have brought to the forefront how much we value our environment. Our homes, our livelihoods, our health and that of our children depend on clean water to drink, clean air to breathe, and healthy ecosystems that produce our food and the raw materials that support modern life. The U.S. Environmental Protection Agency (EPA) and its mission to protect human health and the environment have never been more vital than they are today.



The Fiscal Year (FY) 2011–2015 EPA Strategic Plan responds to this increasing degree of environmental awareness and the challenges that lie ahead.¹ We have created a streamlined, executive-level Plan that sets the Agency's direction, advances the Administrator's priorities, and will be used routinely by the Agency's senior leadership as a management tool. We have sharpened our strategic goals and objectives and offer a more focused set of strategic measures to better inform our understanding of progress and challenges alike in managing our programs. We intend to pursue these goals and objectives as One EPA, through meaningful collaboration across the Agency. Our new cross-cutting fundamental strategies are directed at refocusing and tangibly changing the way we carry out our work. We anticipate that this new approach will foster a renewed commitment to accountability, transparency, and inclusion.

Our five strategic goals represent a simplified and meaningful approach to our work and reflect the results we hope to achieve on behalf of the American people:

- ◆ Goal 1: Taking Action on Climate Change and Improving Air Quality
- ◆ Goal 2: Protecting America's Waters
- ◆ Goal 3: Cleaning Up Communities and Advancing Sustainable Development

- ◆ Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution
- ◆ Goal 5: Enforcing Environmental Laws

To achieve the long-term goals and associated objectives and strategic measures set out in this Plan, we will track progress through annual performance measures, which are presented in EPA's *Annual Performance Plans and Budgets*. We will report on our performance against these annual measures in our *Annual Performance Reports*, and use this performance information as we establish priorities, develop future budget submissions, and manage programs. Additionally, EPA reports on High Priority Performance Goals (Priority Goals), a new component of this Administration's performance management framework. Priority Goals are specific, measurable, ambitious, near-term targets that align with our long-term strategic measures and annual measures. The Priority Goals communicate the performance improvements we will accomplish relative to our priorities using existing legislative authority and resources. The Priority Goals constitute 18- to 24-month operational targets the Agency will work to accomplish, distinguishing the Priority Goals from the longer-term measures. This process will come full circle as we evaluate these performance data to develop future *Strategic Plans*.

Our measures for the FY 2011–2015 EPA Strategic Plan draw upon some of the indicators contained in

EPA's 2008 *Report on the Environment* (ROE).² The indicators help us to monitor trends in environmental conditions and environmental influences on human health. Our efforts to develop the report and regularly update the indicators have advanced our performance measurement work by bringing together existing and new analytical information on the environment and human health.

During the five-year horizon of this *Plan*, we know that we will face unanticipated challenges and opportunities that will affect our ability to achieve our objectives and the specific measurable results that we have described. In particular, we recognize that numerous entities vital to our success—federal³, state, tribal, and local governments, and cooperating partners and stakeholders—are operating under resource constraints that could impede our joint progress. This *Plan* provides the framework to address these challenges and make necessary adjustments.

This FY 2011–2015 *EPA Strategic Plan* sets forth our vision and commitment to preserve the environment for future generations and to protect human health in the places where people live, work, learn, and play. It is our hope that you will join us as we undertake the important work that lies ahead.

Consultation Efforts

The Government Performance and Results Act of 1993 directs all federal departments and agencies to consult with parties interested in or likely to be affected by a strategic plan. Consultation with EPA's federal, state, local, and tribal government partners and our many stakeholders is an integral part of the Agency's strategic planning process. To that end, EPA:

- Engaged with key partners and co-regulators throughout the effort to develop the *Draft Plan*.
- Significantly expanded our outreach efforts for public review of the *Draft FY 2011–2015 EPA Strategic Plan* to enhance transparency and inclusion. We issued, for the first time, a news release in both English and Spanish and a *Federal Register Notice* and used www.regulations.gov to encourage feedback on the *Draft Plan*.
- Sent notification letters to over 800 organizations and individuals to request input. These entities included leaders of the Agency's Congressional authorizing and appropriations committees; states and state associations; all federally-recognized tribes; tribal organizations; local government representatives; other federal agencies; public health organizations; environmental, public interest, and public policy groups; and representatives of the regulated community.
- Established an on-line discussion forum to engage with the public on implementing the cross-cutting fundamental strategies to tangibly change the way we work. Comments received through the discussion forum can be viewed at <https://blog.epa.gov/strategicplan>.

Our efforts to significantly expand our outreach for public review of the *Draft Plan* resulted in over 500 public comments, compared to approximately 50 public comments for prior *Draft Strategic Plans*.

End Notes:

- 1 The *Fiscal Year 2011–2015 EPA Strategic Plan* covers the timeframe from October 1, 2010 through September 30, 2015 unless otherwise noted.
- 2 EPA electronic *Report on the Environment* is available at <http://www.epa.gov/roe>.
- 3 Federal entities with whom we expect continued cooperation or coordination for EPA's five strategic goals include: Agriculture, Army Corps of Engineers, Commerce, Consumer Product Safety Commission, Defense, Education, Energy, Federal Emergency Management Agency, General Services Administration, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, State, Transportation, Treasury, Tennessee Valley Authority, U.S. Agency for International Development, and U.S. Trade Representative.

Goal 1: Taking Action on Climate Change and Improving Air Quality



Reduce greenhouse gas emissions and develop adaptation strategies to address climate change, and protect and improve air quality.

Climate change poses risks to human health, the environment, cultural resources, the economy, and quality of life.¹ These changes are expected to create further challenges to protecting human health and welfare. Many effects of climate change are already evident and will persist into the future regardless of future levels of greenhouse gas (GHG) emissions. Potential climate change impacts may include, for example, increased smog levels in many regions of the country, making it more difficult to attain or maintain clean air. A rise in sea level or increased precipitation intensity may increase flooding, which would affect water quality, as large volumes of water can transport contaminants and overload storm and wastewater systems. In order to protect human health and the environment, EPA must recognize and consider the challenge a changing climate poses to the environment.

Since passage of the Clean Air Act Amendments in 1990, nationwide air quality has improved significantly.² Despite this progress, about 127 million Americans lived in counties that did not meet air quality standards for at least one pollutant in 2008. Long-term exposure to air pollution can cause cancer and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems.³ Because people spend much of their lives indoors, the quality of indoor air is also a major concern. Twenty percent of the population spends the day indoors in

Objectives:

- **Address Climate Change.** Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.
- **Improve Air Quality.** Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.
- **Restore the Ozone Layer.** Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.
- **Reduce Unnecessary Exposure to Radiation.** Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

Strategic Measures associated with this Goal are on pages 43 through 45.

elementary and secondary schools, where problems with leaky roofs and with heating, ventilation, and air conditioning systems can trigger a host of health problems, including asthma and allergies. Exposure to indoor radon is responsible for an estimated 20,000 premature lung cancer deaths each year.⁴

Reduce GHG Emissions and Develop Adaptation Strategies to Address Climate Change

EPA's strategies to address climate change support the President's GHG emissions reduction goals. EPA and its partners will reduce GHG emissions domestically and internationally through cost-effective, voluntary programs while pursuing additional regulatory actions as needed. Our efforts include:

- ◆ Developing and implementing a national system for reporting GHG emissions. (Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals.)⁵
- ◆ Issuing new standards to reduce emissions from cars and light-duty trucks for model years 2012 through 2016, extending that program to model year 2017 and beyond, and creating a similar program to reduce GHGs from medium- and heavy-duty trucks for model years 2014–2018. (Implementing the light-duty GHG rule is one of the Agency's Priority Goals.)⁶
- ◆ Developing standards to reduce GHG emissions from nonroad sources such as marine and aircraft and land-based nonroad equipment and locomotives.
- ◆ Implementing permitting requirements for facilities that emit large amounts of GHGs to encourage design and construction of more efficient and advanced processes that will contribute to a clean energy economy.
- ◆ Implementing refocused voluntary programs that maximize GHG reductions through the greater use of energy-efficient technologies, products, and practices, and promoting energy and transportation policies that benefit the environment and human health.
- ◆ Collaborating with state, local, and tribal governments on regulatory and policy initiatives, technical assistance, and voluntary programs related to climate change mitigation and adaptation.
- ◆ Collaborating with countries and other international partners to reduce methane emissions and

deliver clean energy to markets around the world through the Global Methane Initiative.

- ◆ Developing a comprehensive report to Congress on black carbon that will provide a foundation for evaluating future approaches to black carbon mitigation.
- ◆ Pursuing a sustainable, life-cycle approach to managing materials.
- ◆ Identifying and assessing substitute chemical and ozone-depleting substances and processes for their global-warming potential.
- ◆ Educating the public about climate change and actions people can take to reduce GHG emissions.

Adaptation initiatives aim to increase the resilience of communities and ecosystems to climate change by increasing their ability to anticipate, prepare for, respond to, and recover from the impacts of climate change. Many of the outcomes EPA is working to attain are sensitive to weather and climate. Consequently, every action EPA takes, including promulgating regulations and implementing programs, should take these fluctuations into consideration. For example, EPA models the ways in which weather affects air quality when it develops air quality standards, and cannot assume that climate is constant, an assumption typically made in the rulemaking process.

EPA must adapt and plan for future changes in climate, work with state, tribal, and local partners, and continue to collaborate with the U.S. Global Change Research Program and the Interagency Task Force on Climate Change Adaptation.⁷ The Agency must incorporate the anticipated, unprecedented changes in climate into its programs and rules, drawing on the critical information and tools provided by EPA researchers, to continue to fulfill statutory, regulatory, and programmatic requirements.

Improve Air Quality

Taking into account the most current health effects research findings⁸, EPA recently completed new, more health-protective standards for lead, sulfur dioxide, and nitrogen dioxide. We are in the process of reviewing the ozone, particulate matter, and carbon monoxide standards. Over the next five years, we will

work with states and tribes to develop and implement plans to achieve and maintain these standards. Our research provides the tools and information necessary for EPA, states, and tribes to implement air quality standards and controls.

In 2011, we expect to complete and begin implementing a rule to replace the Clean Air Interstate Rule that was remanded to us by the courts in 2008. Strengthening the standards and decreasing the emissions that contribute to interstate transport of air pollution will help many areas of the country attain the standards and achieve significant improvements in human health. As we implement the standards, we will do so in a way that protects disproportionately-impacted low-income and minority communities.

We are also working with partners and stakeholders to improve the overall air quality management system and to address air quality challenges expected over the next 10 to 20 years. These efforts include improving the state implementation plan

approval process, implementing a national training strategy, and developing effective air quality strategies that address multiple pollutants and consider the interplay between air quality and factors such as land use, energy, transportation, and climate.

We will address emissions from vehicles, engines, and fuels through an integrated strategy that combines regulatory approaches that take advantage of technological advances and cleaner fuels with voluntary programs that reduce vehicle, engine, and equipment activity and emissions. We are working with refiners, renewable fuel producers, and others to implement regulations to increase the amount of renewable fuel

blended into gasoline. Through the National Clean Diesel Campaign, we support diesel emission reductions that can be achieved through such actions as switching to cleaner fuels; engine retrofit, repair, and replacement; and idle reduction.

Air toxics are both widespread and community-specific. They are emitted by large industry, small businesses, motor vehicles, and many other common activities. While certain chemicals are ubiquitous throughout the country, in some areas of concentrated industrial and/or mobile source activity, concentrations may be significantly greater. EPA will continue to set and enforce control technology-based air toxics emissions standards and, where needed, amend those standards to address

residual risk and technology advancements.

EPA is developing a strategy aimed at reducing toxic air pollution from stationary sources in a way that targets priority categories of sources, reduces pollution in communities, utilizes a more cost-effective 'sector-based'

approach, and provides tools to help communities and other stakeholders participate in rulemaking. These priority categories include petroleum refining, iron and steel, chemical manufacturing, utilities, non-utility boilers, oil and gas, and Portland cement. As part of this strategy, EPA will take advantage of the natural overlap of certain air toxics and criteria pollutant rules and coordinate the development and implementation of Maximum Achievable Control Technology (MACT) and New Source Performance Standards (NSPS) where it makes sense. Often, there are opportunities to control air toxic and criteria pollutants together. By coordinating MACT standard



development for specific source categories with other rulemaking efforts, EPA can substantially reduce the resources needed to develop standards; provide more certainty and lower cost for industry; simplify implementation for states, local, and tribal agencies; and, enhance cost-effective regulatory approaches.

Along with these regulatory efforts, EPA has a wide range of voluntary efforts to reduce emissions, including programs to reduce multi-media and cumulative risks. Through data from our national toxics monitoring network and from national and local assessments, we are able to better characterize risks and assess priorities. We work with state and local agencies, tribes, schools, and community groups to identify communities where air toxics pollution is occurring at unsafe levels and aggressively take action to reduce air toxics pollution within those areas.

Often the people most exposed to air pollutants are those most susceptible to the effects—the young, the elderly, and the chronically ill. To improve indoor air quality, EPA deploys programs that educate the public about indoor air quality concerns, including radon, and promotes public action to reduce potential risks in homes, schools, and workplaces. EPA also collaborates with state and tribal organizations, environmental and public health officials, housing and building organizations, school personnel who manage school environments, and health care providers, who treat children prone to or suffering disproportionately from asthma. The focus of these efforts is to support communities' efforts to address indoor air quality health risks. We also provide policy and technical support and financially assist states and tribes in developing and implementing effective radon programs.

Restore the Ozone Layer

EPA will implement programs that reduce and control ozone-depleting substances (ODS), enforce rules on their production, import, and emission, and facilitate the transition to substitutes that reduce GHG emissions and save energy. We will continue partnership programs that minimize the release of ODS and programs that educate the public about the importance of protection from ultra-violet radiation.

Reduce Unnecessary Exposure to Radiation

Recognizing the potential hazards of radiation, Congress charged EPA with the primary responsibility for protecting people and the environment from harmful and avoidable exposures. In fulfilling this responsibility, we will review and update our radiation protection regulations and guidance, operate the national radiation monitoring system, maintain radiological emergency response capabilities, oversee the disposal of radioactive waste at the Waste Isolation Pilot Plant, inspect waste generator facilities, and evaluate compliance with applicable environmental laws and regulations.

Applied Research

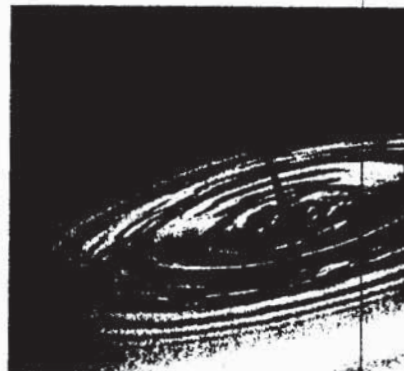
EPA's research efforts will focus on a number of air quality and climate areas over the next several years. In particular, EPA will:

- ◆ Conduct integrated science assessments of criteria air pollutants and provide new data and approaches for improving these assessments;
- ◆ Improve inventory and risk information to better inform Agency actions relative to air toxics;
- ◆ Promote resilience and adaptation by connecting air quality, water quality, and land use managers with climate change information and decision-support tools;
- ◆ Promote systems research and life-cycle analysis in analyzing the health and environmental impacts of energy production and operation, including biofuels; and,
- ◆ Investigate the influence of climate change on clean air, as well as the impacts of emissions from low-carbon fuels in transportation.

End Notes:

- 1 Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.). 2009. Global Climate Change Impacts in the United States (New York, New York: Cambridge University Press). Available at <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>.
- 2 U.S. EPA, 2010. *Our Nation's Air-Status and Trends through 2008*. EPA-454/R-09-002. Available at <http://epa.gov/airtrends/2010/index.html>.
- 3 U.S. EPA, 2007. *The Plain English Guide to the Clean Air Act*. EPA-456/K-07-001. Available at <http://www.epa.gov/air/peg/peg.pdf>.
- 4 U.S. EPA, 2003. *EPA's Assessment of Risks from Radon in Homes*. EPA 402-R-03-003. Available at <http://www.epa.gov/radon/pdfs/402-r-03-003.pdf>.
- 5 Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals: By June 15, 2011, EPA will make publicly available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting confidential business information (CBI).
- 6 Implementing the light-duty GHG rule is one of the Agency's Priority Goals: In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light-duty vehicles sold in the U.S. starting with model year 2012.
- 7 The U.S. Global Change Research Program coordinates and integrates federal research on changes in the global environment and their implications for society. It was mandated by Congress in the Global Change Research Act of 1990 (P.L. 101-606). In 2009, the White House Council on Environmental Quality, the Office of Science and Technology Policy, and the National Oceanic and Atmospheric Administration initiated the Interagency Climate Change Adaptation Task Force. When the President signed the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance in October 2009, he called on the Task Force to develop federal recommendations for adapting to climate change impacts both domestically and internationally.
- 8 U.S. EPA, 2006. *Air Quality Criteria for Lead (2006) Final Report*. EPA/600/R-05/144aF-bF. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823>.
U.S. EPA, 2008. *Integrated Science Assessment (ISA) for Sulfur Oxides—Health Criteria (Final Report)*. EPA/600/R-08/047F. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198843>.
U.S. EPA, 2008. *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report)*. EPA/600/R-08/071. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645>.

Goal 2: Protecting America's Waters



Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants and wildlife, and economic, recreational, and subsistence activities.

The nation's water resources are the lifeblood of our communities, supporting our economy and way of life. Across most of our country, we enjoy and depend upon reliable sources of clean and safe water. Several decades ago, however, many of our drinking water systems provided water to the tap with very limited treatment. Drinking water was often the cause of illnesses linked to microbiological and other contaminants. Many of our surface waters would not have met today's water quality standards. Some of the nation's rivers were open sewers, posing health risks, and many waterbodies were so polluted that safe swimming, fishing, and recreation were not possible.

We have made significant progress since enactment of the landmark Clean Water Act and Safe Drinking Water Act almost 40 years ago. Today, the enhanced quality of our surface waters and the greater safety of our drinking water are testaments to decades of environmental protection and investment, but serious challenges remain. Small drinking water systems are particularly challenged by the need to improve infrastructure and develop the capacity to meet new and existing standards. Tens of thousands of homes, primarily in tribal and disadvantaged communities and the territories, still lack access to basic sanitation and drinking water. The rate at which new waters are listed for water quality impairments exceeds the pace at which restored waters are removed from the list.

Objectives:

- **Protect Human Health.** Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.
- **Protect and Restore Watersheds and Aquatic Ecosystems.** Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures associated with this Goal are on pages 46 through 48.

Pollution discharged from industrial, municipal, agricultural, and stormwater sources continue to be causes of water quality problems, but other significant contributors include loss of habitat and habitat fragmentation, hydrologic alteration, the spread of invasive species, and climate change. For many years, nonpoint source pollution—principally nitrogen, phosphorus, and sediments—has been recognized as the largest remaining impediment to improving water quality. Recent national surveys have found that our waters are stressed by nutrient pollution, excess sedimentation, and degradation of shoreline vegetation, which affect upwards of 50 percent of our lakes and streams.¹ Climate change will compound these

problems, highlighting the urgency to evaluate with our partners options for protecting infrastructure, conserving water, reducing energy use, adopting "green" infrastructure and watershed-based practices, and improving the resilience of infrastructural and natural systems, including utilities, watersheds, and estuaries.²

Over the next five years, EPA will work with states, territories, and tribes to safeguard human health, make America's water systems sustainable and secure, strengthen the protection of our aquatic ecosystems, improve watershed-based approaches, focus efforts in key geographic areas³, and take action on climate change. EPA has established two Priority Goals for the revision of drinking water standards to strengthen public health protection⁴ and the development of state watershed implementation plans in support of the Chesapeake Bay total maximum daily load called for in the Chesapeake Bay Protection and Restoration Executive Order.⁵ Working with our partners, the Agency's effort to protect our waters is aimed at two objectives—protecting human health and protecting and restoring watersheds and aquatic ecosystems.



- ◆ Developing new and revising existing drinking water standards; and,
- ◆ Supporting states, tribes, territories, and local water systems in implementing these standards.

While promoting sustainable management of drinking water infrastructure, we will provide needed oversight and technical assistance to states, territories, and tribes so that their water systems comply with or exceed existing standards and are able to comply with new standards. We will also promote the construction of infrastructure that brings safe drinking water into the homes of small, rural, and disadvantaged communities and increase efforts to guard the nation's critical drinking water infrastructure.

In addition, EPA is actively working Agency-wide and with external partners and stakeholders to implement a new, multi-faceted drinking water strategy. It is designed to streamline decision making and expand protection to meet the needs of rural, urban, and other communities. This shift in approach seeks to address chemicals and contaminants by group, as opposed to working on a chemical-by-chemical basis;

Protect Human Health

Sustaining the quality and supply of our water resources is essential to safeguarding human health. More than 290 million people living in the United States rely on the safety of tap water provided by public water systems that are subject to national drinking water standards. Over the next five years, EPA will help protect human health and make America's water systems sustainable and secure by:

- ◆ Financing public water system infrastructure to protect and maintain drinking water quality;
- ◆ Strengthening compliance with drinking water standards;
- ◆ Continuing to protect sources of drinking water from contamination;

fostering the development of new drinking water treatment technologies; using the authority of multiple statutes; and, encouraging collaboration with states and tribes to share more complete data from monitoring at public water systems.

Science-based standards are essential to protect our public water systems, groundwater and surface water bodies, and recreational waters. These standards are the foundation for tools to safeguard human health such as advisories for beaches, fish consumption, and drinking water. Over the next five years, we will expand that science to improve our understanding of emerging potential waterborne threats to human health. We will also increase efforts to protect and improve beach water quality for our communities, including the development of new criteria and testing methods that provide quicker results and enable faster action on beach safety.

Protect and Restore Watersheds and Aquatic Ecosystems

People and the ecological integrity of aquatic systems rely on healthy watersheds. EPA employs a suite of programs to protect and improve water quality in the nation's watersheds—rivers, lakes, wetlands, and streams—as well as in our estuarine, coastal, and ocean waters. In partnership with states, territories, local governments, and tribes, EPA's core water programs help:

- ◆ Protect, restore, maintain, and improve water quality by financing wastewater treatment infrastructure;
- ◆ Conduct monitoring and assessment;
- ◆ Establish pollution reduction targets;
- ◆ Update water quality standards;
- ◆ Issue and enforce discharge permits; and,
- ◆ Implement programs to prevent or reduce nonpoint source pollution.

Over the next five years, EPA will continue efforts to restore waterbodies that do not meet water quality standards, preserve and protect high quality aquatic resources, and protect, restore, and improve wetland acreage and quality. The Agency will improve the way existing tools are used, explore how innovative tools can be applied, and enhance efforts and cross-media collaboration to protect and prevent water quality impairment in healthy watersheds.

In partnership with states, tribes, and local communities, EPA is developing a clean water strategy that will outline objectives for advancing the vision of the Clean Water Act and actions EPA will take to achieve those objectives. The Agency will explore ways to improve the condition of the urban waterways that may have been overlooked or under-represented in local environmental problem solving. We will also work more aggressively to reduce and control pollutants that are discharged from industrial, municipal, agricultural, and stormwater sources, and vessels, as well as to implement programs to prevent and reduce pollution that washes off the land during rain events. By promoting "green" infrastructure and

sustainable landscape management, EPA will help restore natural hydrologic systems and reduce pollution from stormwater events.⁶

EPA will also lead efforts to restore and protect aquatic ecosystems and wetlands, particularly in key geographic areas³, to address complex and cross-boundary challenges. EPA is heading up a multi-agency effort to restore and protect the Great Lakes, one of America's great waters, through the Great Lakes Restoration Initiative.⁷ In other parts of the nation, we will focus on nutrient pollution, which threatens the long-term health of important ecosystems such as the Chesapeake Bay. Further, given the environmental catastrophe resulting from the Deepwater Horizon BP oil spill, EPA will take necessary actions to support efforts to remove oil from and restore the Gulf of Mexico ecosystem. EPA will provide assistance to other federal, state, tribal, and local partners as they work to restore the water, wetlands, beaches, and surrounding communities of this vital area. We will also begin to identify actions to respond and adapt to the current and potential impacts of climate change on aquatic resources, including the current and potential impacts associated with warming temperatures, changes in rainfall amount and intensity, and sea level rise.⁸

Applied Research

EPA's research will help ensure that natural and engineered water systems have the capacity and resiliency to meet current and future water needs for the range of water-use and ecological requirements. These efforts will help position the Agency to meet the future needs in water resources management by:

- ◆ Evaluating individual and groups of contaminants for the protection of human health and the environment;
- ◆ Developing innovative tools, technologies, and strategies for managing water resources (including stormwater); and,
- ◆ Supporting a systems approach for protecting and restoring aquatic systems. The development of watershed-level data, tools, and approaches is crucial to our ability to provide adequate and safe water resources.

End Notes:

- 1 U.S. EPA, 2006. *Wadeable Streams Assessment: A Collaborative Survey of the Nation's Streams*. EPA 841-B-06-002. Available at <http://www.epa.gov/owow/streams/survey>. See also EPA, 2010. *National Lakes Assessment: A Collaborative Survey of the Nation's Lakes*. EPA 841-R-09-001. Available at http://www.epa.gov/lakessurvey/pdf/nla_chapter0.pdf.
- 2 Resilience is the ability of a system to absorb change and disturbance and still retain its fundamental function and/or structure.
- 3 Key geographic areas in the national water program include the Chesapeake Bay, the Great Lakes, the Gulf of Mexico, the U.S.–Mexico Border region, the Pacific Islands, the Long Island Sound, the South Florida Ecosystem, the Puget Sound Basin, the Columbia River Basin, and the San Francisco Bay Delta Estuary. For more information on these programs and their performance measures, see the annual National Water Program Guidance, available at <http://www.epa.gov/water/waterplan/index.html>.
- 4 EPA has developed a Priority Goal as part of the drinking water strategy efforts: Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.
- 5 EPA has developed a Priority Goal to support the Chesapeake Bay Executive Order: Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay total maximum daily load (TMDL) and consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010. For more information, see <http://executiveorder.chesapeakebay.net>.
- 6 For information on managing wet weather with green infrastructure, see http://cfpub.epa.gov/npdes/home.cfm?program_id=298.
- 7 Great Lakes Restoration Initiative, information available at <http://greatlakesrestoration.us/>.
- 8 United States Global Change Research Program, information available at <http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts>.

Goal 3: Cleaning Up Communities and Advancing Sustainable Development



Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Uncontrolled releases of waste and hazardous substances can contaminate our drinking water and threaten healthy ecosystems. EPA leads efforts to preserve, restore, and protect these precious resources so they are available for both current and future generations. Over the next several years, our highest priorities under this goal are to prevent and reduce exposure to contaminants and accelerate the pace of cleanups across the country. EPA works collaboratively with international, state, and tribal partners to achieve these aims and with communities to ensure that they have a say in environmental decisions that affect them. Our efforts are guided by scientific data, research, and tools that alert us to emerging issues and inform decisions on managing materials and addressing contaminated properties.

Promote Sustainable and Livable Communities

EPA supports urban, suburban, and rural community goals of improving environmental, human health, and quality-of-life outcomes through partnerships that also promote economic opportunities, energy efficiency, and revitalized neighborhoods. Sustainable communities balance their economic and natural assets so that the diverse needs of local residents can be met now and in the future with limited environmental

Objectives:

- **Promote Sustainable and Livable Communities.** Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.
- **Preserve Land.** Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.
- **Restore Land.** Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.
- **Strengthen Human Health and Environmental Protection in Indian Country.** Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures associated with this Goal are on pages 49 through 51.

impacts. EPA accomplishes these outcomes by working with communities, other federal agencies, states, and national experts to develop and encourage development strategies that have better outcomes for air quality, water quality, and land preservation and revitalization.

Development and building construction practices may result in a broad range of impacts on human health and the environment. EPA is working with other federal, state, and local partners to develop best practices and guidance on aspects of sustainability related to how and where development occurs, including promoting smarter growth patterns and encouraging widespread adoption of green building technologies to support our strategic goals.

For example, EPA has joined with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) to minimize the environmental impacts of development, which may include improved access to affordable housing, more transportation options, and lower transportation costs.¹ Through a set of guiding "livability" principles and a partnership agreement that will guide the agencies' efforts, this partnership is coordinating federal housing, transportation, water, and other infrastructure investments to protect the environment, promote equitable development, and help to address the challenges of climate change.

EPA is committed to ensuring environmental justice regardless of race, color, national origin, or income. Recognizing that minority and/or low-income communities may face disproportionate environmental risks, we work to protect these communities from adverse health and environmental effects and to ensure they are given the opportunity to participate meaningfully in environmental cleanup decisions.

EPA's brownfields program emphasizes environmental and human health protection in a manner that stimulates economic development and job creation by awarding competitive grants to assess and clean up brownfield properties and providing job training opportunities, particularly in underserved communities.² We also provide outreach and technical assistance to communities, including area-wide planning approaches, to identify: viable end uses of a single, large property or groups of brownfield

properties; associated air and water infrastructure investments; and, environmental improvements in the surrounding area to revitalize the community. Under EPA's brownfields Priority Goal, area-wide planning will be conducted with the participation of other federal agencies, states, tribes, and local governments and communities to identify resources and approvals necessary to carry out actions identified in area-wide plans.³ This new approach differs from the way EPA brownfields resources have traditionally been used, recognizing that approaching the assessment and cleanup needs of a brownfields-impacted area can be more effective than focusing on individual sites in isolation of the adjacent or surrounding area.

Preserve Land

EPA and authorized states issue and enforce permits for the treatment, storage, or disposal of hazardous wastes to ensure that facilities subject to Resource Conservation and Recovery Act (RCRA) regulations operate safely. To prevent future environmental contamination and to protect the health of the estimated three million people living within a mile of hazardous waste management facilities⁴, EPA and its state partners continue their efforts to issue, update, or maintain RCRA permits for approximately 10,000 hazardous waste units (such as incinerators and landfills) at these facilities.

EPA is increasing emphasis on life-cycle based materials management. In order to respond to RCRA's mandate to conserve resources and energy, EPA will focus on strategies that emphasize sustainable materials management by identifying and reducing or minimizing waste at all life-cycle stages, from extraction of raw materials through end of life.⁵ Through this approach, EPA will focus on improving resource use through evaluating the environmental impacts of life-cycle stages of a material, product, or service, including identifying GHG benefits. EPA will develop national strategies that consider using less environmentally intensive and toxic materials and continue to promote downstream solutions, like reuse and recycling, to conserve our resources for future generations.

To reduce the risk posed by underground storage tanks (USTs) located at nearly a quarter of a million facilities throughout the country, EPA and states are working to ensure that every UST system is inspected

at least once every three years. As fuel types change, UST systems must be equipped to safely store the new fuels. EPA is working to ensure biofuels are stored in compatible UST systems.

Restore Land

Challenging and complex environmental problems, such as contaminated soil, sediment, and groundwater that can cause human health concerns, persist at many contaminated properties. EPA's Superfund, RCRA corrective action, leaking underground storage tank, and brownfields cleanup programs, and Toxic Substances Control Act (TSCA) cleanups of polychlorinated biphenyls (PCBs), reduce risks to human health and the environment by assessing and cleaning up these sites to maintain or put them back into productive use.

In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, EPA has initiated the Integrated Cleanup Initiative (ICI), a multi-year effort to better use the most appropriate assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. By using the relevant tools available in each of the cleanup programs, including enforcement, EPA will better leverage the resources available to address needs at individual sites. EPA will examine all aspects of the cleanup programs, identifying key process improvements and enhanced efficiencies. As part of the ICI, EPA will develop a new suite of performance measures that will support comprehensive management of the cleanup life cycle by addressing three critical points in the cleanup process—starting, advancing, and completing site cleanup.

EPA is continuing to improve its readiness to respond to releases of harmful substances, including oil spills,

by clarifying authorities, training personnel, and providing proper equipment. Given the Deepwater Horizon BP oil spill and the efforts to clean up and restore the Gulf of Mexico, EPA will review its current rules, guidelines and procedures on oil spills. EPA will ensure that it has the appropriate tools to prevent, prepare for, respond to, and recover from such incidents within its jurisdiction.⁶

National preparedness is essential to ensure that emergency responders are able to address multiple, large-scale emergencies, including those that may involve chemicals, oil, biological agents, radiation, or weapons of mass destruction. Consistent with the government-wide National Response Framework,

EPA prepares for the possibility of multiple, simultaneous, nationally significant incidents across several regions and provides guidance and technical assistance to state and local planning and response organizations.

EPA's hazardous waste programs are working to reduce the energy use and environmental footprint during the investigation and remediation of sites. As part of this effort, EPA's Superfund program will implement its green remediation strategy to reduce the energy, water, and materials used during site cleanups while ensuring that

protective remedies are implemented.⁷

EPA is also implementing its Community Engagement Initiative designed to enhance our involvement with local communities and stakeholders so that they may meaningfully participate in decisions on land cleanup, emergency response, and management of hazardous substances and waste. The goals of this initiative are to ensure transparent and accessible decision-making processes, to deliver information that communities can use to participate meaningfully, to improve EPA responsiveness to community perspectives, and to ensure timely cleanup decisions.



Strengthen Human Health and Environmental Protection in Indian Country

Under federal environmental statutes, EPA is responsible for protecting human health and the environment in Indian country. EPA's commitment to tribal environmental and human health protection, through the recognition of tribal sovereignty and self-determination, has been steadfast for over 25 years, as formally established in the Agency's 1984 Indian Policy.⁸ EPA works with over 500 federally-recognized tribes located across the United States to improve environmental and human health outcomes. Indian country totals more than 70 million acres with reservations ranging from less than 10 acres to more than 14 million acres. Difficult environmental and health challenges remain in many of these areas, including lack of access to safe drinking water, sanitation, adequate waste facilities, and other environmental safeguards taken for granted elsewhere.

In collaboration with our tribal partners and fulfilling our government-to-government responsibilities, EPA

will engage in a two-part strategy for strengthening human health and environmental protection in Indian country. First, EPA will provide the opportunity for federally-recognized tribes to create an effective and results-oriented environmental capacity-building presence. Second, EPA will ensure that its programs are implemented in Indian country either by EPA or through opportunities for implementation of environmental programs by tribes themselves.

Applied Research

In the area of cleaning up communities, research will allow EPA to identify and apply approaches that better inform and guide environmentally sustainable behavior, protect human health and ecosystems, and provide the products and services needed for mitigation, management, remediation, and long-term stewardship of contaminated sites. It will also provide state, tribal, and local decision makers with the knowledge needed to make smart, systems-based decisions that will inform a balanced approach to their cleanup and development needs.

End Notes:

- 1 Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality. Information available at <http://www.epa.gov/dced/built.htm>.
- 2 For more information about EPA's brownfields program, see <http://www.epa.gov/brownfields>.
- 3 EPA has developed a Priority Goal for brownfields: By 2012, EPA will have initiated 20 enhanced brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.
- 4 This refers to the total estimated number of people that live within a mile of each of the RCRA hazardous waste facilities that have approved controls in place. Site-specific data can be queried from the Enforcement and Compliance History On-line database, which provides fast, integrated searches of EPA and state data for regulated facilities (see http://www.epa-otis.gov/echo/compliance_report_rcra.html). Population data included in the database is from the 2000 U.S. Census.
- 5 For more information on sustainable materials management, see *Sustainable Materials Management: The Road Ahead*. EPA 530R-09-009. Available at <http://www.epa.gov/osw/inforesources/pubs/vision2.pdf>
- 6 Several federal agencies have jurisdiction and authority for oil spill preparedness, response, and recovery in the U.S. in addition to EPA, including the Department of Transportation and the Coast Guard. EPA's efforts will focus on those aspects of the national oil spill program for which they have authority and responsibility, primarily the inland area and fixed facilities, as well as sharing best practices, pertinent research, and lessons learned with its federal partners.
- 7 More information about Superfund and green remediation at EPA is available at <http://www.epa.gov/superfund/greenremediation>.
- 8 The 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations is available at <http://www.epa.gov/tribal/pdf/indian-policy-84.pdf>.

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution



Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Chemicals are involved in the production of everything from our homes and cars to the cell phones we carry and the food we eat. Thousands of chemicals have become ubiquitous in our everyday lives and everyday products, as well as in our environment and our bodies. Chemicals are often released into the environment as a result of their manufacture, processing, use, and disposal. Research shows that children receive greater exposures to chemicals because they inhale or ingest more air, food, or water on a body-weight basis than adults do.¹ Other vulnerable groups, including low-income, minority, and indigenous populations, are also disproportionately impacted by, and thus particularly at risk from, chemicals.

In 2009, the Administration announced principles for modernizing the Toxic Substances Control Act (TSCA) to help inform efforts underway in Congress to reauthorize and significantly strengthen EPA's ability to assess the safety of industrial chemicals and adequately protect against unreasonable environmental or public health risks.² TSCA is outdated and should be revised to provide stronger and clearer authority for EPA to collect and act upon critical data regarding chemical risks. While TSCA does provide some authority to EPA to collect chemical information and mandate industry to conduct testing, there remain large, troubling gaps in the available data and state of knowledge on many widely used chemicals in commerce. EPA's authority to require development and submission of information and testing data is limited

Objectives:

- **Ensure Chemical Safety.** Reduce the risk of chemicals that enter our products, our environment, and our bodies.
- **Promote Pollution Prevention.** Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

Strategic Measures associated with this Goal are on pages 52 through 53.

by legal hurdles and procedural requirements. As we look to the future, it is important to work together with Congress and stakeholders to modernize and strengthen the tools available under TSCA to prevent harmful chemicals from entering the marketplace and to increase confidence that those chemicals that remain are safe and do not endanger the environment or human health, especially for consumers, workers, and sensitive subpopulations like children.

The 1990 Pollution Prevention Act established preventing pollution before it is generated as national environmental policy. EPA is enhancing cross-cutting efforts to advance sustainable practices, safer chemicals, greener processes and practices, and safer products.

Ensure Chemical Safety

Chemical safety is one of EPA's highest priorities. EPA's approach to chemical risk management leverages expertise, information, and resources by collaborating with other countries, federal agencies, states, tribes, and the public to improve chemical safety.³ Children and other disproportionately exposed and affected groups, including low-income, minority, and indigenous populations, require more explicit consideration in EPA's chemical risk assessments and management actions, in accordance with the Executive Orders and guidance on children's health and environmental justice.⁴

EPA employs a variety of strategies under several statutes to ensure the safety of chemicals. These include:

- ◆ Controlling the risks of new chemicals before they are introduced or reintroduced into commerce;
- ◆ Evaluating chemicals already in use;
- ◆ Developing and implementing regulatory and other actions to eliminate or reduce identified chemical risks; and,
- ◆ Making public the data necessary to assess chemical safety to the extent allowed by law.^{5,6}

EPA has enhanced its work to ensure the safety of existing chemicals by taking action to restrict the production and use of chemicals posing unreasonable risks and better assess chemicals that may pose environmental or public health concerns. This will quicken the Agency's pace in characterizing the hazards posed by the highest volume chemicals, maximize use of existing TSCA authorities to increase the availability of chemical information, and accelerate work to identify safer alternatives.

Over the next five years, the Agency will implement risk management actions for chemicals that pose unreasonable risk to the environment or human health, carefully considering how the most vulnerable populations are potentially affected. EPA is strengthening rules to keep track of chemicals in commerce and adding chemicals and data requirements to better inform both EPA and the public about releases of toxic chemicals into the environment. EPA is



increasing its evaluation of claims of confidentiality in order to make all health and safety data for chemicals in commerce more publicly available to the extent allowed by law. EPA is also applying increasingly sophisticated scientific tools in reviewing hundreds of new chemical submissions each year under TSCA and increasing the efficiency and effectiveness of these reviews through the implementation of electronic submission and management systems.⁷

EPA will make major strides in guarding against exposure to chemicals that continue to pose potential risks to human health and the environment even after their hazards have been identified and certain uses have been phased out. For example, to continue to reduce childhood blood lead levels, EPA is working in partnership with states and tribes to certify hundreds of thousands of lead-paint professionals and expand public awareness of lead risks by implementing requirements for the use of lead-safe practices in renovation, remodeling, and painting activities in millions of older homes.^{8,9}

Over the next five years, EPA will manage a comprehensive pesticide risk reduction program through science-based registration and reevaluation processes, a worker safety program, certification and training

activities, and support for integrated pest management. EPA's current pesticide review processes focus on ensuring that pesticide registrations comply with the Endangered Species Act and achieve broader Agency objectives for water quality protection. The review processes will continue to place emphasis on the protection of potentially sensitive populations, such as children, by reducing exposures from pesticides used in and around homes, schools, and other public areas. EPA is reviewing its worker safety certification and training regulations to ensure that they are adequately protective. EPA's review processes ensure that pesticides can be used safely and are available for use to maintain a safe and affordable food supply, to address public health outbreaks, and to minimize property damage that can occur from insects and pests.¹⁰

EPA is also working to identify and address any potential risks of nanoscale materials during new and existing chemical review and on improving data collection efforts.¹¹ In addition, EPA is implementing a comprehensive testing program to screen for chemicals' potential to interact with the endocrine system.¹² More broadly, EPA is looking comprehensively across statutes to determine the best tools to apply to specific problems. For example, under a new drinking water strategy, the Agency is exploring how to use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and TSCA to ensure that drinking water is protected from pesticides and industrial chemicals and that chemicals found in drinking water are being screened for endocrine disrupting properties using the authorities of the Safe Drinking Water Act (SDWA), the Federal Food, Drug, and Cosmetic Act (FDCA), and FIFRA.

Prevent Pollution at the Source

The Pollution Prevention Act of 1990 established national pollution prevention policy. Time and experience have added to our understanding and appreciation of the value of preventing pollution before it occurs. Pollution prevention is central to all of EPA's sustainability strategies, and EPA will continue to incorporate pollution prevention principles into our policies, regulations, and actions. Pollution prevention, a long-standing priority for EPA, encourages companies, communities, governmental organizations, and individuals to prevent pollution and waste

before generation by implementing conservation techniques, promoting efficient re-use of materials, making production processes more sustainable, and promoting the use of safer substances. Together with new technology development, these pollution prevention practices result in significant co-benefits, such as the conservation of raw materials, water, and energy; reduction in the use of hazardous and high global-warming-potential materials; promotion of safer chemical substitutes; reduction of greenhouse gas emissions; and, the elimination of pollutant transfers across air, water, and land. EPA will collaborate with states and other partners to review pollution prevention results and identify enhanced pollution prevention strategies. This will also include continuing grants to states to support vital state pollution prevention infrastructures and fund technical assistance for local businesses.

EPA promotes "green" chemistry through the development and use of innovative chemical technologies. The Agency advances environmentally-conscious design, commercialization, and use of "green" engineering processes and sets standards for labeling programs that meet stringent criteria giving consumers assurance about the environmental integrity of the products they use. In addition, EPA helps agencies across the federal government comply with green purchasing requirements, thereby stimulating demand for "greener" products and services.¹³

Research

EPA chemicals research will continue to provide the scientific foundation for addressing the risks of chemical exposure in humans and wildlife. It will include enhanced chemical screening and testing approaches for priority-setting and context-relevant chemical assessment and management. Research will inform Agency actions and help local decision makers address contaminants of greatest concern to them, particularly with respect to air toxics and drinking water issues. EPA will continue assessments of high priority chemicals. EPA's research program also will promote discoveries and innovations in green chemistry and green engineering to help encourage use of safer chemicals in commerce.

End Notes:

- 1 Environmental Working Group, 2005. *Body Burden—The Pollution in Newborns*. Available at <http://www.ewg.org/reports/bodyburden2/execsumm.php>.
- 2 Essential Principles for Reform of Chemicals Management Legislation. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/principles.html>.
- 3 "EPA Increases Transparency of Chemical Risk Information: Action part of continued comprehensive reform of toxic substances laws." EPA News Release, January 21, 2010. Available at <http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceeeac8525735900400c27/631cf22eb540c4db852576b2004eca47?OpenDocument>.
- 4 Executive Orders include: E.O. 13045 (Protection of Children from Environmental Health Risks and Safety Risks) and E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations). Relevant guidance documents can be found on EPA's environmental justice and children's health websites, <http://www.epa.gov/compliance/environmentaljustice/index.html> and <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/homepage.htm>.
- 5 Collecting and Assessing Information on Chemicals. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/collectinfo.html>.
- 6 Managing Chemical Risk. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/managechemrisk.html>.
- 7 Overview of EPA New Chemicals Program. Available at <http://www.epa.gov/oppt/newchems>.
- 8 Information about childhood lead poisoning is available at <http://www.leadfreekids.org>.
- 9 EPA Lead-Safe Certification Program. Available at <http://www.epa.gov/lead/pubs/toolkits.htm>.
- 10 EPA pesticides program information is available at <http://www.epa.gov/pesticides>.
- 11 Information about nanotechnology is available at <http://www.epa.gov/ncet/nano/factsheet/>.
- 12 Information about the EPA Endocrine Disruptor Screening Program is available at <http://www.epa.gov/scipoly/oscpendo/index.htm>.
- 13 Information about the EPA Environmentally Preferable Purchasing Program is available at <http://www.epa.gov/epp/pubs/about/about.htm>.

Goal 5: Enforcing Environmental Laws



Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Vigorous enforcement supports EPA's ambitious goals to protect human health and the environment. Achieving these goals for safe drinking water, lakes and streams that are fishable and swimmable, clean air to breathe, and communities and neighborhoods that are free from chemical contamination requires both new strategies and compliance with the rules we already have. By addressing noncompliance swiftly and effectively, EPA's civil and criminal enforcement cases directly reduce pollution and risk, and deter others from violating the law.

EPA enforcement takes aggressive action against pollution problems that make a difference in communities. Through vigorous civil and criminal enforcement and other compliance tools, EPA targets the most serious water, air, and chemical hazards, and advances environmental justice by protecting low-income, minority, and tribal communities that are disproportionately impacted by such hazards.

Vigorous civil and criminal enforcement plays a central role in achieving the bold goals below that the Administrator has set for EPA:

- ◆ **Taking Action on Climate Change and Improving Air Quality:** EPA will take effective actions to reduce air pollution from the largest sources, including coal-fired power plants and the cement, acid, and glass sectors, to improve air quality. Enforcement to cut toxic air pollution in communities improves the health of

Objective:

- ◆ **Enforce Environmental Laws.** Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures associated with this Goal are on pages 54 through 55.

communities, particularly low-income, minority, and tribal communities that are disproportionately impacted by pollution. Enforcement supports reductions in greenhouse gases (GHG) through enforcement settlements that encourage GHG emission reductions. EPA will also work to ensure compliance with new standards and reporting requirements for GHG emissions as they are developed.

- ◆ **Protecting America's Waters:** EPA is re-vamping enforcement and working with state permitting authorities under the Clean Water Act Action Plan¹ to make progress on the most important water pollution problems. This work includes, as a Priority Goal, increasing enforcement actions in waters that do not meet water quality standards. In addition the Agency will

continue to focus on getting raw sewage out of water, cutting pollution from animal waste, and reducing pollution from stormwater runoff.² Enforcement will help to clean up great waters like the Chesapeake Bay and will assist in revitalizing urban communities by protecting urban waters. Enforcement will also support the goal of assuring safe drinking water for all communities, including in Indian country.

- ◆ **Cleaning Up Communities and Advancing Sustainable Development:** EPA protects communities by requiring responsible parties to conduct cleanups, saving federal dollars for sites where there are no other alternatives. Aggressively pursuing these parties to clean up sites ultimately reduces direct human exposures to hazardous pollutants and contaminants, provides for long-term human health protection, and makes contaminated properties available for reuse.
- ◆ **Ensuring the Safety of Chemicals and Preventing Pollution:** Reforming chemical management enforcement and reducing exposure to pesticides will help protect human health. Enforcement reduces direct human exposures to toxic chemicals and pesticides and supports long-term human health protection.

Criminal enforcement underlines our commitment to pursuing the most serious pollution violations. EPA's criminal enforcement program will focus on cases

across all media that involve serious harm or injury; hazardous or toxic releases; ongoing, repetitive, or multiple releases; serious documented exposure to pollutants; and, violators with significant repeat or chronic noncompliance or prior criminal conviction.

EPA shares accountability for environmental and human health protection with states and tribes. We work together to target the most important pollution violations and ensure that companies that do the right thing and are responsible neighbors are not put at a competitive disadvantage. EPA also has a responsibility to oversee state and tribal implementation of federal laws to ensure that the same level of protection for the environment and the public applies across the country.

Enforcement can help to promote environmental justice by targeting pollution problems that disproportionately impact low-income, minority, and tribal communities. Ensuring compliance with environmental laws is particularly important in communities that are exposed to greater environmental health risks. EPA fosters community involvement by making information about compliance and government action available to the public.³

Increased transparency is an effective tool for improving compliance. By making information on violations both available and understandable, EPA empowers citizens to demand better compliance.

End Notes:

- 1 An overview of the Clean Water Action Plan is available at <http://www.epa.gov/oecaerth/civil/cwa/cwaenplan.html>.
- 2 EPA has developed a Priority Goal for water enforcement: EPA will increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.
- 3 Information about compliance and government action is available at <http://www.epa.gov/compliance/index.html>.

External Factors and Emerging Issues

EPA sets goals and objectives in carrying out its mission to protect human health and the environment, but there are always factors outside of EPA's control that affect our ability to do our work. For example, the changing economic, legal, and regulatory landscape often affects the Agency's resources, anticipated activities, and direction. As part of a dynamic global community addressing technological changes, EPA is confronted with challenges, emerging issues, and opportunities every day. An oil spill, flood, hurricane, tragedy, or other disasters can swiftly divert the Agency's anticipated focus. Other issues, such as climate change and population growth, can create long-term challenges that run deep and across many EPA programs. Additionally, EPA accomplishes much of its work through partnerships, particularly with states and tribes, and any budget shortfalls they experience can affect our ability to achieve our goals.

External factors and emerging issues present both opportunities and challenges to EPA. Specifically, over the next five years, EPA will be actively engaged in a variety of areas:

- ◆ **Climate Change:** Energy and transportation policies continue to evolve and influence the Agency's ability to improve air quality and address climate change issues. Impacts of climate change, such as changes in rainfall amount and intensity, shifting weather and seasonal patterns, and increases in flood plain elevations and sea levels, will also affect progress towards many of the goals. Yet other developments may have positive environmental impacts. The growth of alternative energy sources and increased investments in energy efficiency can reduce greenhouse gas emissions and improve local air quality.
- ◆ **American Reinvestment and Recovery Act (ARRA):** We expect the long-term impact of ARRA¹ funding will advance assessment and cleanup activities at former industrial sites, help address local water infrastructure needs, and spur technological innovation, promoting energy efficiency, alternative energy supplies, and new technologies and innovation in water infrastructure.
- ◆ **Water Quality:** Water quality programs face challenges such as increases in nutrient loadings and stormwater runoff, aging infrastructure, and population growth (which can increase water consumption and place additional stress on aging water infrastructures). The Agency needs to examine carefully the potential impacts of and solutions to these issues, including effects on water quality and quantity that could result in the long term from climate change.
- ◆ **Waste Management:** Our necessary reliance on private parties, state and tribal partners, the use of new and innovative control technologies, and the involvement of other federal agencies in remediation efforts can all affect our efforts to remediate contaminated sites and prevent waste. New waste streams are continually emerging, such as those from mining of rare earth elements which are used in clean-energy technologies, potentially presenting increased opportunities for recycling of valuable materials and challenges for safe disposal of new waste streams.
- ◆ **Protective Site Cleanup:** Hazardous waste programs are intended to provide permanent solutions to contaminated media at sites or facilities to the extent practicable. Complications can arise when new scientific information concerning contaminants at a site suggests that a risk assessment that was protective when a remedy was selected is no longer protective given the contaminant levels remaining at a site and their potential exposure pathways and uses. As appropriate, EPA must incorporate emerging science into decision making to maintain its commitment to provide permanent solutions.
- ◆ **Chemical Safety:** Legislative reforms to the Toxic Substances Control Act in line with the Administration's principles would provide EPA

with the ability to obtain and publicly disclose critical information on the risks posed by chemicals. This will strengthen our chemical risk assessment and management programs, and significantly improve federal and state ability to manage and mitigate risk from industrial chemicals.

- ◆ **Communities:** Citizen science—individual citizens and community groups that monitor and document environmental trends—can expand the reach of EPA's own field presence. Communities have access to more environmental, economic, and social data than ever before that can be synthesized and analyzed through varying tools and technologies. With this information, communities can make smarter management decisions which may lead to increasingly effective stewardship. While citizen science requires expert support to ensure the quality of environmental data and to facilitate knowledge-building, with the right tools, communities can spur local industry and others to

do a better job of complying with environmental laws and regulations.

The world in which EPA works continues to change rapidly. The recent oil spill in the Gulf of Mexico is a catastrophic environmental problem that will have significant consequences and require innovative technological and other solutions. A wide range of new technologies are on the horizon in areas as diverse as nanotechnology catalysts and nanosolar cells, nanomaterials for rehabilitation of water pipes, advanced battery technologies, accurate and inexpensive portable and real-time sensors, and the application of synthetic biology to algal biofuel production. Emerging technologies may present new environmental problems that need to be understood and addressed, and at the same time will create opportunities for building an advanced technological infrastructure. EPA will continue to do its best to anticipate change and be prepared to address the inevitable challenges and opportunities that we will face in the future.

End Note:

- 1 Information about the American Reinvestment and Recovery Act is available at <http://www.recovery.gov>.

Summary of Program Evaluation

The Administration has emphasized the importance of using program evaluation to provide the evidence needed to demonstrate that our programs are meeting their intended outcomes. By assessing how well a program is working and *why*, program evaluation can help EPA identify where our activities have the greatest impact on protecting human health and the environment, provide the road map needed to replicate successes, and conversely, identify areas needing improvement. This is particularly important as EPA meets its obligations for transparency and accountability.

For the *Strategic Plan*, we look to the results of past evaluations to inform our program strategies for the next five years. Evaluation results may affirm existing strategies or identify opportunities for improvement and may lead to changes in policy, resource decisions, and program implementation. For example, the Government Accountability Office's 2007 evaluation of the Toxic Substances Control Act helped frame Administrator Jackson's September 2009 announcement of an integrated approach to chemical management and a set of principles for reform. Additionally, EPA commissioned the National Academy of Public Administration (NAPA) to conduct an independent evaluation of the Community Action for a Renewed Environment (CARE) Demonstration Program, a competitive

grant program that offers an innovative way for a community to organize and take action to reduce toxic pollution in its local environment.¹ Recommendations and feedback from this evaluation have informed EPA's strategic changes and investment decisions in the program.

Our plans for future program evaluations include cyclical reviews of our research and development programs. These are geared to ensure that our research priorities meet our future challenges. Examples of other future evaluations include assessing the impact of our "green" chemical labeling program on consumer purchasing habits and measuring the success of less resource-intensive remediation strategies to clean up hazardous waste sites across the country.

While EPA conducts a variety of design, process, and outcome evaluations, under the Administration's government-wide evaluation initiative, EPA is working to evolve and expand our portfolio to conduct more rigorous impact evaluations that will enhance program effectiveness. Recently completed process and program evaluations from EPA and external organizations that informed the strategies in the *Strategic Plan* and a preliminary list of future program evaluations EPA plans to conduct are described in more detail at the *EPA Strategic Plan* website.²

End Notes:

- 1 National Academy of Public Administration, 2009. *Putting Community First: A Promising Approach to Federal Collaboration for Environmental Improvement*. Available at http://www.napawash.org/pc_management_studies/CARE/5-21-09_Final_Evaluation_Report.pdf.
- 2 EPA *Strategic Plan* website: <http://www.epa.gov/ocfo/plan/plan.htm>.

Cross-Cutting Fundamental Strategies

Introduction

Since EPA's inception over 40 years ago, we have focused not only on our mission to achieve environmental and human health results but also on how we work to accomplish those results. Achievement of each of these goals and objectives is shared across EPA. Through this *Plan*, EPA is placing an increased focus on how we work to achieve those results.

We have developed a set of cross-cutting strategies that stem from the Administrator's priorities and are designed to fundamentally change how we work, both internally and externally, to achieve the mission outcomes articulated under our five strategic goals. This *Plan* describes the vision and operating principles for each of the cross-cutting strategies:

- ◆ Expanding the conversation on environmentalism;
- ◆ Working for environmental justice and children's health;
- ◆ Advancing science, research, and technological innovation;
- ◆ Strengthening state, tribal, and international partnerships; and,
- ◆ Strengthening EPA's workforce and capabilities.

The Agency will develop annual action plans with commitments that align with existing planning, budget, and accountability processes. In implementing these strategies through annual action plans, we

are embarking on a deliberate, focused effort to take tangible, measurable actions to transform the way we deliver environmental and human health protection.

Expanding the Conversation on Environmentalism



Engage and empower communities and partners, including those who have been historically under-represented, in order to support and advance environmental protection and human health nationwide.

We have begun a new era of outreach at EPA and seek to include a broader range of people and communities in our work and expand our engagement with communities historically under-represented in our decision-making processes. We will build stronger working relationships throughout the country, particularly with tribes, communities of color, economically-distressed cities and towns, young people, and others.

To accomplish these goals, we will:

- ◆ Call for innovation and bold thinking and ask all employees to bring their creativity and talents to their everyday work to enhance outreach and transparency in all our programs.
- ◆ Ensure that our science is explained clearly and accessible to all communities, communicating and educating in plain language the complexities of environmental, health, policy, and regulatory issues.
- ◆ Educate and empower individuals, communities, and Agency partners in decision making through public access to environmental information and data.
- ◆ Ensure that the Agency's regulations, policies, budget, and decision-making processes are transparent and accessible through increased access to environmental data sources, community right-to-know tools, and direct stakeholder engagement.
- ◆ Address barriers to improve engagement with historically under-represented sectors of the nation.
- ◆ Use traditional and new media to inform and educate the public about Agency activities and provide opportunities for community feedback.
- ◆ Encourage citizens to understand the complexities and impacts of environmental issues and environmental stewardship, and provide avenues and tools that enhance their ability to participate in processes that could affect them.

Working for Environmental Justice and Children's Health



Work to reduce and prevent harmful exposures and health risks to children and underserved, disproportionately impacted low-income, minority, and tribal communities, and support community efforts to build healthy, sustainable green neighborhoods.

Advancing environmental justice and protecting children's health must be driving forces in our decisions across all EPA programs. The underlying principles for this commitment are reducing exposures for those at greatest risk and ensuring that environmental justice and children's health protection are integral to all Agency activities. All populations—including minority, low-income, and indigenous populations—that are vulnerable to environmental pollution are at risk of having poor health outcomes. These vulnerabilities may arise because of higher exposures to pollution in places where they work, live, and play, and/or diminished abilities to withstand, cope with, or recover from exposure to environmental pollution.¹ Children are often most acutely affected by environmental stressors. Research has demonstrated that prenatal and early life exposures to environmental hazards can cause lifelong diseases, medical conditions, and disabilities.²

Environmental justice and children's health protection will be achieved when all Americans, regardless of age, race, economic status, or ethnicity, have access to clean water, clean air, and healthy communities. To accomplish this, EPA will use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect children and disproportionately impacted,

overburdened populations from environmental and human health hazards. Our success in advancing environmental justice and children's health protection will result from fully incorporating these priorities into all of our activities across each of the strategic goals of the Agency. We anticipate that our leadership in advancing environmental justice and children's health protection will inspire and engage a broad spectrum of partners in the public and private sector to do the same.

Specifically, EPA will:

- ◆ In our regulatory capacity, implement the nation's environmental laws using the best science and environmental monitoring data to address the potential for adverse health effects from environmental factors in disproportionately impacted, overburdened populations and vulnerable age groups. EPA programs will incorporate environmental justice and children's health considerations at each stage of the Agency's regulation development process and in implementation of environmental regulations.
- ◆ Develop and use environmental and human health indicators to measure improvements in environmental conditions and health in disproportionately impacted communities and among vulnerable age groups.

- ◆ In our work on safe management of pesticides and industrial chemicals, take into account disproportionately impacted, overburdened populations, and women of child-bearing age, infants, children, and adolescents, and encourage the use of "green chemistry" to spur the development of safer chemicals and production processes.
- ◆ Apply the best available scientific methods to assess the potential for disproportionate exposures and health impacts resulting from environmental hazards on minority, low-income, and indigenous populations, women of child-bearing age, infants, children, and adolescents, to support EPA decision making, and to develop the tools to assess risk from multiple stressors.
- ◆ Engage communities in our work to protect human health and the environment. EPA will align multiple community-based programs to provide funding and technical assistance to communities to build capacity to address critical issues affecting children's health and disproportionately impacted populations.
- ◆ Work with other federal agencies³ to engage communities and coordinate funding and technical support for efforts to build healthy, sustainable, and green neighborhoods, and work with residents to promote equitable development.

End Notes:

- 1 See the following sources:

World Health Organization, 2006. *Principles for Evaluating Health Risks in Children*. Environmental Health Criteria, 237. Available at http://whqlibdoc.who.int/publications/2006/924157237X_eng.pdf;

EPA, 2003. Framework for Cumulative Risk Assessment. Risk Assessment Forum. EPA/630/P-02/001F. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=54944>; and,

EPA, 2004. *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*. Available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.

- 2 National Institutes of Health, National Institute of Environmental Health Sciences, 2008. *Linking Early Environmental Exposures to Adult Diseases*. Available at <http://www.niehs.nih.gov/health/docs/linking-exposures.pdf>.
- 3 Including the Departments of Housing Urban and Development, Health and Human Services, Energy, Agriculture, Transportation, Interior, Labor, and Education.

Advancing Science, Research, and Technological Innovation



Advance a rigorous basic and applied science research and development agenda that informs, enables, and empowers and delivers innovative and sustainable solutions to environmental problems. Provide relevant and robust scientific data and findings to support the Agency's policy and decision-making needs.

The major challenges we face to human health and the environment are not incremental problems, and they do not lend themselves to incremental solutions. EPA will promote innovative solutions to environmental problems that reduce or eliminate pollution while avoiding unintended and/or unwanted consequences, addressing pollutants, chemicals, and materials throughout their life cycle from raw material to final disposition.

The Office of Management and Budget (OMB) has reiterated the critical and timely need for innovation in science and technology, building on the President's *Strategy for American Innovation*.^{1,2} OMB identifies priorities that include new approaches to multi-disciplinary research, new approaches for accelerating technology commercialization and innovation, interagency and international collaborations, and better communication with the public on science, technology, and innovation.

Environmental sustainability is a guidepost for science, research, and technological innovation at EPA.³ Sustainability is a broader approach to environmental protection that considers trade-offs in production processes and materials use. Sustainable solutions prevent chemicals from entering the environment or eliminate, rather than simply reduce, the production of waste through better materials management.

EPA must help drive high quality research, sound science, and technology innovation to sustainably address air quality, climate change, water quality and quantity, unreasonable risks from toxic chemicals, ecosystem degradation, and other environmental issues. EPA will inform, enable, and stimulate the development of sustainable solutions to current and future challenges because sustainable and innovative environmental solutions can also be more economically efficient.

EPA science and research must always inform the decisions that are essential to the protection of human health and the environment and empower the broader community that supports our mission. To address challenging environmental problems in this manner, EPA research will:

- ◆ **Provide timely, responsive, and relevant solutions:** EPA's science, research, and technological innovation depend on partnerships and a continuing dialogue with internal and external partners and stakeholders to ensure that EPA efforts focus on the highest priority problems faced by the Agency and the nation. Building on traditional collaboration efforts, EPA will also leverage the scientific discoveries of others to achieve even more responsive solutions to the environmental problems that our communities face.

- ◆ **Transcend traditional scientific disciplines:** A broad perspective—one that integrates knowledge from a wide variety of sources—is key to developing sustainable solutions. In all aspects of our work, from problem identification, to research design and conduct, to implementation and adoption of solutions, EPA must rely on diverse disciplines. Environmental problems often raise complex scientific and technological issues that require non-traditional approaches. If EPA is to advance progress on these challenging problems, we must rely on integrated, trans-disciplinary research that complements traditional, single-discipline approaches.
- ◆ **Communicate widely and openly:** Great work, done invisibly, cannot have an impact. To maximize the impact and utility of our research, EPA will communicate the design, definition, conduct, transfer, and implementation of the work we do. We will translate our science so that it is accessible, understandable, relevant to, and used by stakeholders and the general public. EPA must document our successes to maximize the value of our scientific work.
- ◆ **Catalyze sustainable innovation:** EPA's efforts alone will not be enough to address the environmental challenges our nation faces. As we develop and promote these technology innovations, EPA must account for life-cycle perspectives and support technologies that fully consider environmental and social impacts, and collaborate with partners in academia, government, and industry to assess impacts and promote effective product stewardship. EPA must also guide sustainable solutions on the path from conceptual and proof-of-concept stages, through research and development, to commercialization and deployment. EPA must understand and engage the marketplace to ensure the effectiveness of these solutions. Additionally, EPA must be receptive to external innovations in science, research, and technology that can enhance EPA's effectiveness in fulfilling our mission.

End Notes:

- 1 OMB Memorandum M-10-30, July 21, 2010. "Science and Technology Priorities for the FY2012 Budget." Available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2010/m10-30.pdf>.
- 2 Press Release from the White House Office of the Press Secretary, September 21, 2009. "President Obama Lays Out Strategy for American Innovation." Available at http://www.whitehouse.gov/the_press_office/President-Obama-Lays-Out-Strategy-for-American-Innovation/.
- 3 Information on the EPA Sustainability Program is available at <http://www.epa.gov/sustainability/>.

Strengthening State, Tribal, and International Partnerships



Deliver on our commitment to a clean and healthy environment through consultation and shared accountability with states, tribes, and the global community for addressing the highest priority problems.

EPA will strengthen its state, tribal, and international partnerships to achieve our mutual environmental and human health goals. As we work together, our relationships must continue to be based on integrity, trust, and shared accountability to make the most effective use of our respective bodies of knowledge, our existing authorities, our resources, and our talents.

Successful partnerships will be based on four working principles: consultation, collaboration, cooperation, and accountability. By *consulting*, we will engage our partners in a timely fashion as we consider approaches to our environmental work so that each partner can make an early and meaningful

contribution toward the final result. By *collaborating*, we will not only share information, but we will actively work together with our partners to use all available resources to reach our environmental and human health goals. As our work progresses, we will *cooperate*, viewing each other with respect as allies who must work successfully together if our goals are to be achieved. Through shared *accountability*, we will ensure that environmental benefits are consistently delivered nationwide. In carrying out these responsibilities, EPA will ensure through oversight that state and tribal implementation of federal laws achieves a consistent level of protection for the environment and human health.

With States

Under our federal environmental laws, EPA and the states share responsibility for protecting human health and the environment. With this relationship as the cornerstone of the nation's environmental protection system, EPA will:

- ◆ Improve implementation and consistent delivery of national environmental programs through closer consultation and transparency.
- ◆ Work with states to seek efficient use of resources through work-sharing, joint planning using data analysis and targeting to address priorities, and other approaches.

- ◆ Play a stronger management role to facilitate the exchange of data with states to improve program effectiveness and efficiency.
- ◆ Consult with state and local governments on a routine basis to ensure that the development and implementation of rules is consistent with EPA's *Action Development Process: Guidance on Executive Order 13132 (Federalism)*, which recognizes the division of governmental responsibilities between the federal government and the states.

- ◆ Strengthen state-EPA shared accountability by focusing oversight on the most significant and pressing state program performance challenges, using data and analysis to speed program improvements.
- ◆ Ensure a level playing field across states to improve compliance and address the most serious violations.

With Tribes

The relationship between the United States Government and federally-recognized tribes is unique and has developed throughout the course of the nation's history. In strengthening this relationship, EPA will:

- ◆ Focus on increasing tribal capacity to establish and implement environmental programs while ensuring that our national programs are as effective in Indian country as they are throughout the rest of the nation.
- ◆ Enhance our effort as we work with tribes on a government-to-government basis, based upon the Constitution, treaties, laws, executive orders, and a long history of Supreme Court rulings.
- ◆ Strengthen our cross-cultural sensitivity with tribes, recognizing that tribes have cultural, jurisdictional, and legal features that must be considered when coordinating and implementing environmental programs in Indian country.

With Other Countries

To achieve our domestic environmental and human health goals, international partnerships are essential. Pollution is often carried by winds and water across national boundaries, posing risks many hundreds and thousands of miles away. Many concerns, like climate change, are universal. In the international arena, EPA will:

- ◆ Expand our partnership efforts in multilateral forums and in key bilateral relationships.
- ◆ Enhance existing and nurture new international partnerships to promote a new era of global environmental stewardship based on common interests, shared values, and mutual respect.

Strengthening EPA's Workforce and Capabilities



Continuously improve EPA's internal management, encourage innovation and creativity in all aspects of our work, and ensure that EPA is an excellent workplace that attracts and retains a topnotch, diverse workforce, positioned to meet and address the environmental challenges of the 21st century.

Achieving positive environmental and human health outcomes through cleaner and safer air, water, and land, and through protection of our natural resources is the focal point of all our work at EPA. This compelling mission attracts workers eager to make a difference and drives employees across the Agency to work together. EPA fully supports the Administration's efforts to reform the federal government's hiring system to ensure highly qualified individuals are available to strengthen EPA's workforce. EPA believes these reforms will improve the Agency's ability to protect human health and the environment more effectively and efficiently.

EPA is a complex organization. This is both an asset and a challenge. To achieve its mission, EPA is continuously building and nurturing a skilled workforce, finding new ways to use the power of information, working together through enhanced communication, and demanding transparency and accountability at all levels. With innovative and creative management and a talented, diverse, and highly motivated workforce, EPA will be positioned to meet head-on the complex environmental challenges of the present and future.

To achieve this goal, EPA will:

- ◆ Recruit, develop, and retain a diverse and creative workforce, equipped with the technical skill and knowledge needed to accomplish the Agency's mission and to meet evolving environmental challenges.
- ◆ Cultivate a workplace that values a high quality work life, provides employee-friendly policies and facilities, and invests in the information infrastructure, technology, and security essential to support a mobile workforce.
- ◆ Practice outstanding resource stewardship to ensure that all Agency programs operate with fiscal responsibility and management integrity, are efficiently and consistently delivered nationwide, and demonstrate results.
- ◆ Take advantage of existing and emerging tools to improve and enhance communication, transparency, and accountability.
- ◆ Integrate energy efficiency and environmental considerations into our work practices as core components of Agency business models and operations.
- ◆ Improve the effectiveness and efficiency of the Agency's acquisition function by strengthening requirements development, contract management, and internal review practices; maximizing the use of competition in contracting, reducing high-risk contracts; improving how contracts are structured; building the skills of the acquisition workforce; and improving management of the EPA acquisition workforce.

Strategic Measurement Framework



Introduction

The *Strategic Plan* provides the foundation for EPA's performance management system—planning, budgeting, performance measurement, and accountability. The *Plan* contains EPA's strategic measurement framework of long-term goals, objectives, and strategic measures, which describe the measurable human health and environmental results the Agency is working to achieve over the next five years.

To achieve the long-term goals, objectives, and strategic measures set out in this *Plan*, EPA designs annual performance measures which are presented in EPA's *Annual Performance Plans and Budgets*. The Agency reports on our performance against these annual measures in *Annual Performance Reports*, and uses this performance information to establish priorities and develop future budget submissions. The Agency also uses this performance data to evaluate our progress and develop future *Strategic Plans*.

EPA's strategic planning and decision-making benefits from other sources of information as well, including program evaluations and environmental indicators. A number of the strategic measures in this *Strategic Plan* are based on indicators contained in EPA's 2008 *Report on the Environment* (ROE). The ROE identifies a set of peer-reviewed human health and environmental indicators that allows EPA to track trends in environmental conditions and environmental influences on human health. This information also helps us better articulate and improve the strategic measurement framework in EPA's *Strategic Plan*.

The Agency continues to look for new data and information sources to better characterize the environmental conditions targeted by our programs and improve our understanding of the integrated and complex relationships involved in maintaining human health and environmental well-being.

Significant Changes in the Strategic Measurement Framework

We have made significant changes to our measurement framework in this *Plan*. We revised our five strategic goals to sharpen and align them with the Administrator's priorities, including a heightened focus on cross-program activities addressing climate change adaptation and mitigation, sustainable communities, and chemical safety. We revised our suite of strategic measures—the measurable environmental and human health outcomes we are working to achieve—in several significant ways. First, we significantly

reduced the number of strategic measures by focusing on the key outcomes most important to advance the Administrator's priorities and the Agency's mission. The goal was to create a *smaller, more strategic, and more meaningful set that Agency leadership uses to manage*. Second, for consistency purposes, we placed all the quantified measurable results at the lowest level in the framework—the strategic measures. Third, we updated the strategic measures to reflect targets and baselines appropriate for the FY 2011–2015 time

horizon. Lastly, we removed the separate objectives and strategic measures for the Agency's research and development program from the *Plan* and integrated this work into the programmatic objectives; this critical work supports many of our strategic measures and will continue to be tracked through annual performance measures.

Some of the new strategic directions in our measures are reflected in this *Plan*, but efforts will continue over the next several years to make further revisions in key areas. Highlights of the new measures and continuing efforts are described below.

- ◆ **Deepwater Horizon BP Oil Spill in the Gulf of Mexico:** While we are still assessing the unprecedented environmental damage from the Deepwater Horizon BP oil spill and the Agency actions necessary to address the damage and prevent similar disasters in the future, we have added a new strategic measure as a preliminary step to reflect the challenge ahead. This measure addresses efforts to conduct a thorough review of our oil spill program regulations to ensure that these regulations are up to date and effective. The magnitude of the impacts has yet to be fully understood and assessed, so further adjustments may be needed in the future. In addition, EPA is working to develop a water-oriented measure in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico. The measure will reflect efforts to assist in the restoration of the Gulf of Mexico ecosystem, including water, wetlands, beaches, and surrounding communities. Currently, EPA has two program-specific water measures, one that relates to Gulf of Mexico hypoxia and the other to regional coastal aquatic ecosystem health that will be reassessed for impact from the oil spill.
- ◆ **Climate Change Adaptation and Mitigation:** The ability of communities to respond to changes in climate over the next decade is critical to achieving many of the environmental outcomes in this *Strategic Plan*. We have incorporated consideration of climate change across all five goals of the *Strategic Plan* and will continue to collaborate with stakeholders, the US Global Change Research Program, the Interagency Taskforce on Climate Change Adaptation, and others. We have added three strategic measures for climate change adaptation under Goal 1. In addition, we have expanded the existing greenhouse gas (GHG) mitigation measure to capture reductions Agency-wide and added a measure to reflect expected GHG reductions resulting from the light-duty vehicle greenhouse gas rule.
- ◆ **Land Cleanup:** EPA has begun an Integrated Cleanup Initiative, a multi-year effort to better use assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. The Agency is working to develop a suite of measures that will allow for comprehensive management across cleanup programs and across the cleanup life cycle, with a focus on three critical points in the cleanup process—starting, advancing, and completing site cleanups. As a first step in this process, we are shifting our definition of success at a Superfund site from where the construction of a remedy is complete, to when the site is actually "ready for anticipated use" in a community. In addition, a new site assessment measure has been developed that fully captures the entire assessment workload at the beginning of the Superfund process, a measure which also may be expanded to include progress of other cleanup programs in the future.¹
- ◆ **Chemical Safety:** One of EPA's highest priorities over the next five years is to ensure the safety of chemicals and pesticides used in this country. As part of this effort, EPA is taking a more integrated approach to managing chemical and pesticide risk reduction and, in coordination with other relevant federal agencies, is focusing on consumers, workers, and sensitive subpopulations like children. EPA is enhancing its ability to measure the effects of chemicals and pesticides on human health and the environment by introducing new measures to reduce the concentration of targeted chemicals and pesticides in the general population and children.
- ◆ **Enforcement and Compliance Assurance:** The Agency's enforcement and compliance assurance program is moving from a tool-based

(e.g., assistance, incentives, monitoring, and enforcement) to an environmental problem-based (e.g., air, water) approach to addressing noncompliance and environmental harms. Our current approach, rooted largely in the traditional inspection and enforcement model, has shown substantial environmental and human health benefits, but will not be able to keep up with expanding universes of regulated sources. For example, the universe of National Pollutant Discharge Elimination System (NPDES) sources has expanded from about one hundred thousand when the Clean Water Act (CWA) was passed to almost one million today. This is especially true in light of the current economic challenges faced by states, which perform the majority of inspections and enforcement actions. For those programs and sectors that have been the focus of EPA and state attention, the level of noncompliance shows us that serious violations are likely widespread, all but ensuring that there are areas across the country where basic health protections for Americans are in jeopardy.

EPA is adopting new strategic approaches to deal with these challenges that do not solely depend on inspections and enforcement to address serious violations, including:

- ◆ Building self-monitoring and reporting requirements into rules, which will allow government to better understand the compliance status at regulated facilities.
- ◆ Using 21st century technologies to facilitate the electronic transmission of data directly from regulated sources and states that generate the data, to government agencies that receive the data, which will improve the quality and timeliness of data available to make decisions.

- ◆ Making more information available to the public in an easy-to-use, understandable format so the public can demand better facility and government performance.

As part of this new approach, the Agency's enforcement program is developing a suite of measures that expand its ability to communicate to the public. As part of this suite, the Agency is including measures for its criminal enforcement program for the first time in the *Strategic Plan*. The suite of measures addresses:

- ◆ **Enforcement Presence/Level-of-Effort Measures:** The extent of the general enforcement and compliance assurance presence in communities;
- ◆ **Case-Linked Outcome Indicators:** The annual and long-term trends in environmental benefits resulting from EPA enforcement actions; and
- ◆ **Strategic Enforcement Measures:** The results of EPA's focused efforts to address specific, high-priority problems that make a difference to communities.

When viewed together, this suite of measures provides a more comprehensive understanding of the program than has been available previously. This suite of measures is captured in the figure on the next page.



Suite of Strategic Enforcement and Compliance Assurance Measures

Measures in the FY 2011–2015 Strategic Plan		Measures under Development
Enforcement Presence/ Level of Effort Measures	Case-Linked Outcome Indicators	Strategic Enforcement Measures (under development)
<ul style="list-style-type: none"> • Inspections & evaluations • Initiated & concluded civil judicial & administrative enforcement cases • Compliance status of open, non-Superfund consent decrees • Address cost recovery statute of limitations cases with total past costs above \$200,000 • Reaching settlement with potentially responsible parties (PRPs) • Criminal cases with charges filed • Criminal cases with defendants convicted 	AIR	AIR
	<ul style="list-style-type: none"> • Air pollutants reduced 	<ul style="list-style-type: none"> • Air toxics • Criteria air pollutants
	WATER	WATER
	<ul style="list-style-type: none"> • Water pollutants reduced 	<ul style="list-style-type: none"> • Raw sewage • Animal waste • Water compliance
	WASTE	WASTE
	<ul style="list-style-type: none"> • Hazardous waste reduced • Contaminated media reduced 	<ul style="list-style-type: none"> • Wastes from mineral processing • Clean up hazardous waste sites in communities
	CHEMICALS	
	<ul style="list-style-type: none"> • Toxic and pesticide pollutants 	
	CRIMINAL	CHEMICALS
	<ul style="list-style-type: none"> • Criminal cases with most significant impacts • Criminal cases with individual defendants 	<ul style="list-style-type: none"> • Reduce exposure to pesticides • Enforce chemical management rules

The *Strategic Plan* includes five-year measures for EPA's enforcement presence and outcome indicators for which EPA will develop annual performance measures for inclusion in the *Annual Plan and Budget*, similar to all strategic measures included in this *Plan*.

The Agency has historically relied on enforcement presence or level-of-effort measures to communicate its enforcement and compliance presence to the public and regulated industry. These measures illustrate that the Agency is actively and consistently performing the activities necessary to find polluters, take appropriate action, and monitor defendants' compliance with settled enforcement cases. The Agency targets these activities toward the most serious human health and environmental problems across a variety of regulatory programs.

The Agency uses case-linked outcome indicators to communicate the environmental benefits gained from completed enforcement and compliance activities such as compliance assistance, compliance incentives, and enforcement cases. While linked, there is not a linear or proportional relationship between the activities and the outcomes.

Unlike level-of-effort results, which tend to be relatively consistent on a yearly basis, these outcome measures are dominated by very large enforcement cases and will typically vary widely over time depending on the pollution problems being addressed. For example, the measure of pounds of pollution reduced by enforcement actions varies widely from year to year and is not expected to trend upwards from one year to the next. In fact, as the most

significant pollution sources are addressed, the amount of pollution reduced by enforcement in a particular industrial sector should go down over time.

Over the next five years, the Agency will develop a new category of measurement—strategic enforcement measures—designed to demonstrate progress toward achieving its national enforcement goal of aggressively going after specific pollution problems that matter to communities. In addition, the strategic enforcement measures will illustrate the work done in Goal 5 to support Goals 1-4 of this *Strategic Plan*.

To launch this effort, the Agency's enforcement program will focus initially on developing measures that demonstrate progress toward the goals of its six national enforcement initiatives.² These initiatives target nationally important pollution problems where enforcement can play an important role to address serious noncompliance. We will develop strategic measures that chart our progress in addressing these significant compliance problems, recognizing that the measures, like the solutions, will vary with the problem. Two examples include: (1) targeting the sectors that contribute the largest amount of serious air pollution that causes significant harm to human health, which include coal-fired utilities and acid, glass, and cement plants; and (2) working to improve compliance by the tens of thousands of animal feeding operations that contribute to water pollution in many communities. We need both aggressive enforcement actions and new creative strategies to tackle sector compliance issues for these important, but very different, problems. Our measures will reflect those strategies, and attempt to do a more complete job of providing meaningful information to the public about our progress than the traditional measures alone can do. What we learn from measures developed for the national enforcement initiatives will be applied in setting measures for our other national enforcement goals.

One of the challenges in improving compliance and reducing pollution is the lack of solid information about facility releases and compliance. These information gaps make it harder to target facilities for enforcement, to understand and develop measures for compliance performance, and for communities to know what pollution is occurring in their own neighborhoods. EPA recognizes that we need to improve facility monitoring of pollution and make that information available to the public using 21st century technologies including more comprehensive electronic reporting. These efforts will increase transparency and create incentives to reduce pollution and to comply with the law, while also giving state and federal governments the information they need to target enforcement and track progress. Over the longer term, as efforts to increase electronically reported facility information take effect, consistently reported, sector-wide data may enable us to generate realistic compliance rates for some sectors. These efforts will help us to strengthen both performance and measures in the years ahead.

Where data, baselines, and targets are available to support the measures, EPA will include new measures for the national initiatives in the *FY 2012 Annual Plan and Budget* in February 2011 and will amend the *Strategic Plan* to include those that are suitable strategic measures. For those measures where EPA does not have existing data, EPA will identify necessary data sources and begin to collect the information with the intention of developing baselines and targets for additional strategic enforcement measures to be included in future *Annual Plans*.

The Agency will also work closely with its state partners to explore how to be more transparent regarding our joint accountability to protect the environment and public health by showing to the public, before FY 2015, both federal and state progress and problems in enforcement and compliance programs, as well as compliance monitoring coverage levels.

EPA's High Priority Performance Goals (Priority Goals)

In addition to the long-term strategic measures, EPA established six near-term Priority Goals in FY 2010 with 18- to 24-month operational targets that advance our strategic goals and serve as key indicators of our work.

EPA will report progress on these Priority Goals in the *Annual Plan and Budget* and through the Office of Management and Budget, with results regularly available to the public at www.performance.gov.

EPA's Priority Goals

EPA will improve the country's ability to measure and control greenhouse gas (GHG) emissions. Building a foundation for action is essential.

- By June 15, 2011, EPA will make publicly available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting confidential business information (CBI).
- In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light-duty vehicles sold in the U.S. starting with model year 2012.

Clean water is essential for our quality of life and the health of our communities. EPA will take actions over the next two years to improve water quality.

- Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay total maximum daily load (TMDL) and consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010.³
- Increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.
- Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.

EPA will ensure that environmental health and protection is delivered to our communities.

- By 2012, EPA will have initiated 20 enhanced brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.

End Notes:

- 1 EPA will continue to report site construction completions as an annual performance measure in its *Annual Plan and Budget*.
- 2 Information about EPA's National Enforcement Initiatives for Fiscal Years 2011–2013 is available at <http://www.epa.gov/compliance/data/planning/initiatives/initiatives.html>. EPA solicited feedback on its FY 2011–2013 national enforcement initiatives in a Federal Register Notice in January 2010 and in an on-line discussion forum (see <http://blog.epa.gov/enforcementnationalpriority>).
- 3 EPA letters available at http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf, http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf, and http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/TMDLScheduleLetter.pdf.



Goal 1: Taking Action on Climate Change and Improving Air Quality. Reduce greenhouse gas emissions and develop adaptation strategies to address climate change, and protect and improve air quality.

Objective 1.1: Address Climate Change. Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.

Strategic Measures:

Address Climate Change

- ◆ By 2015, the light-duty vehicle greenhouse gas rule will achieve reductions of 99 MMTCO₂Eq. (Baseline FY 2010: 0 MMTCO₂Eq.)
- ◆ By 2015, additional programs from across EPA will promote practices to help Americans save energy and conserve resources, leading to expected greenhouse gas emissions reductions of 740.1 MMTCO₂Eq. from a baseline without adoption of efficient practices. This reduction compares to 500.4 MMTCO₂Eq. reduced in 2008. (Baseline FY 2008: ENERGY STAR 140.8 MMTCO₂Eq., Industrial Programs² 314.2 MMTCO₂Eq., Smartway Transportation Partnership 4.2 MMTCO₂Eq., Pollution Prevention Programs 6.5 MMTCO₂Eq., Sustainable Materials Management Programs² 34.3 MMTCO₂Eq., WaterSense Program 0.4 MMTCO₂Eq., Executive Order 13514³ GHG Reduction Program 0.0 MMTCO₂Eq.)
- ◆ By 2015, EPA will integrate climate change science trend and scenario information into five major scientific models and/or decision-support tools used in implementing Agency environmental management programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety).⁴ (Baseline FY 2010: 4 scientific models)
- ◆ By 2015, EPA will account for climate change by integrating climate change science trend and scenario information into five rule-making processes to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety).⁴ (Baseline FY 2010: 0)
- ◆ By 2015, EPA will build resilience to climate change by integrating considerations of climate change impacts and adaptive measures into five major grant, loan, contract, or technical assistance programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and scientific research).⁴ (Baseline FY 2010: 0)

Objective 1.2: Improve Air Quality. Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.

Strategic Measures:

Reduce Criteria Pollutants and Regional Haze

- ◆ By 2015, the population-weighted average concentrations of ozone (smog) in all monitored counties will decrease to 0.073 ppm compared to the average of 0.078 ppm in 2009.
- ◆ By 2015, the population-weighted average concentrations of inhalable fine particles in all monitored counties will decrease to 10.5 µg/m³ compared to the average of 11.7 µg/m³ in 2009.

- ◆ By 2015, reduce emissions of nitrogen oxides (NO_x) to 14.7 million tons per year compared to the 2009 level of 19.4 million tons emitted.
- ◆ By 2015, reduce emissions of sulfur dioxide (SO_2) to 7.4 million tons per year compared to the 2009 level of 13.8 million tons emitted.
- ◆ By 2015, reduce emissions of direct particulate matter (PM) to 3.9 million tons per year compared to the 2009 level of 4.2 million tons emitted.
- ◆ By 2018, visibility in scenic parks and wilderness areas will improve by 15 percent in the East and 5 percent in the West, on the 20 percent worst visibility days, as compared to visibility on the 20 percent worst days during the 2000–2004 baseline.
- ◆ By 2015, with EPA support for developing capability including training, policy, and administrative and technical support, 15 additional tribes will possess the expertise and capability to implement the Clean Air Act in Indian country (as demonstrated by successful completion of an eligibility determination under the Tribal Authority Rule), for a cumulative total of 62 from the 2009 baseline of 47 tribes.

Reduce Air Toxics

- ◆ By 2015, reduce emissions of air toxics (toxicity-weighted for cancer) to 4.2 million tons from the 1993 toxicity-weighted baseline of 7.2 million tons.⁵

Reduce the Adverse Ecological Effects of Acid Deposition

- ◆ By 2015, air pollution emissions reductions will reduce the number of chronically acidic water bodies and improve associated ecosystem health in acid-sensitive regions of the northern and eastern United States by approximately 10 percent below the 2001 baseline of approximately 500 lakes and 5,000 kilometers of stream length.

Reduce Exposure to Indoor Air Pollutants

- ◆ By 2015, the number of future premature lung cancer deaths prevented annually through lowered radon exposure will increase to 1,460 from the 2008 baseline of 756 future premature lung cancer deaths prevented.
- ◆ By 2015, the number of people taking all essential actions to reduce exposure to indoor environmental asthma triggers will increase to 7.6 million from the 2003 baseline of 3.0 million. EPA will place special emphasis on children at home and in schools, and on other disproportionately impacted populations.

Objective 1.3: Restore the Ozone Layer. Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.

Strategic Measure:

Reduce Consumption of Ozone-Depleting Substances

- ◆ By 2015, U.S. consumption of hydrochlorofluorocarbons (HCFCs), chemicals that deplete the Earth's protective ozone layer, will be less than 1,520 tons per year of ozone depletion potential from the 2009 baseline of 9,900 tons per year. By this time, as a result of worldwide reduction in ozone-depleting substances, the level of "equivalent effective stratospheric chlorine" (EESC) in the atmosphere will have peaked at 3.185 parts per billion (ppb) of air by volume and begun its gradual decline to less than 1.800 ppb (1980 level).



Objective 1.4: Reduce Unnecessary Exposure to Radiation. Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

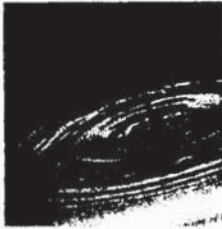
Strategic Measure:

Prepare for Radiological Emergencies

- ◆ Through 2015, EPA will maintain a 90 percent level of readiness of radiation program personnel and assets to support federal radiological emergency response and recovery operations, maintaining the 2010 baseline of 90 percent.

End Notes:

- 1 Industrial Programs include ENERGY STAR for Industry, Natural Gas STAR, Coalbed Methane Outreach Program (CMOP), Landfill Methane Outreach Program (LMOP), Green Power Partnership, Combined Heat and Power Partnership (CHP), Voluntary Aluminum Industry Partnership (VAIP), HFC-23 Emission Reduction Partnerships, Mobile Air Conditioning Climate Protection Partnership (MAC), Environmental Stewardship Initiative, Significant New Alternatives Policy Program (SNAP), Responsible Appliance Disposal Program (RAD), GreenChill Advanced Refrigeration Partnership, and Landfill Rule.
- 2 Sustainable Materials Management Programs include WasteWise, National Waste Recycling, and Coal Combustion Products Recycling (C2P2).
- 3 The Federal Leadership in Environmental, Energy, and Economic Performance Executive Order was signed on October 5, 2009. The Executive Order sets sustainability goals for federal agencies and focuses on making improvements in their environmental, energy, and economic performance.
- 4 The climate is changing and this can impact EPA's ability to achieve its mission and strategic goals. EPA is currently participating in an Interagency Climate Change Adaptation Task Force which will develop recommendations towards a national climate change adaptation strategy in the fall of 2010. EPA's adaptation measures provide a snapshot of EPA's overall effort to integrate climate change adaptation into mainstream decision making within EPA. As the work of the Task Force continues, future measures may be developed that assess the effectiveness of adaptation actions or that reflect a more refined set of climate change adaptation priorities.
- 5 The 2015 target is an estimate based on the 2005 National Emissions Inventory (NEI) released in 2008, which does not include the impacts of post-2007 rulemakings. Updated estimates that do include the impacts of more recent rulemakings will be available after the release of the 2008 NEI in 2011.



Goal 2: Protecting America's Waters. Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants and wildlife, and economic, recreational, and subsistence activities.

Objective 2.1: Protect Human Health. Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.

Strategic Measures:

Water Safe to Drink

- ◆ By 2015, 90 percent of community water systems will provide drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection. (2005 baseline: 89 percent. Status as of FY 2009: 89 percent.)
- ◆ By 2015, 88 percent of the population in Indian country served by community water systems will receive drinking water that meets all applicable health-based drinking water standards. (2005 baseline: 86 percent. Status as of FY 2009: 81 percent.)
- ◆ By 2015, in coordination with other federal agencies, provide access to safe drinking water for 136,100 American Indian and Alaska Native homes. (FY 2009 baseline: 80,900 homes. Universe: 360,000 homes.)

Fish and Shellfish Safe to Eat

- ◆ By 2015, reduce the percentage of women of childbearing age having mercury levels in blood above the level of concern to 4.6 percent. (2002 baseline: 5.7 percent of women of childbearing age have mercury blood levels above levels of concern identified by the National Health and Nutrition Examination Survey (NHANES).)¹

Water Safe for Swimming

- ◆ By 2015, maintain the percentage of days of the beach season that coastal and Great Lakes beaches monitored by state beach safety programs are open and safe for swimming at 95 percent. (2007 baseline: Beaches open 95 percent of the 679,589 days of the beach season (beach season days are equal to 3,647 beaches multiplied by variable number of days of beach season at each beach). Status as of FY 2009: 95 percent.)²

Objective 2.2: Protect and Restore Watersheds and Aquatic Ecosystems.

Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures:

Improve Water Quality on a Watershed Basis

- ◆ By 2015, attain water quality standards for all pollutants and impairments in more than 3,360 water bodies identified in 2002 as not attaining standards (cumulative). (2002 universe: 39,798 water bodies identified by states and tribes as not meeting water quality standards. Water bodies where mercury is among multiple pollutants

causing impairment may be counted toward this target when all pollutants but mercury attain standards, but must be identified as still needing restoration for mercury; 1,703 impaired water bodies are impaired by multiple pollutants including mercury, and 6,501 are impaired by mercury alone. Status as of FY 2009: 2,505 water bodies attained standards.)

- ◆ By 2015, improve water quality conditions in 330 impaired watersheds nationwide using the watershed approach (cumulative). (2002 baseline: Zero watersheds improved of an estimated 4,800 impaired watersheds of focus having one or more water bodies impaired. The watershed boundaries for this measure are those established at the "12-digit" scale by the U.S. Geological Survey (USGS). Watersheds at this scale average 22 square miles in size. "Improved" means that one or more of the impairment causes identified in 2002 are removed for at least 40 percent of the impaired water bodies or impaired miles/acres, or there is significant watershed-wide improvement, as demonstrated by valid scientific information, in one or more water quality parameters associated with the impairments. Status as of FY 2009: 104 improved watersheds.)

- ◆ Through 2015, ensure that the condition of the Nation's streams and lakes does not degrade (i.e., there is no statistically significant increase in the percent rated "poor" and no statistically significant decrease rated "good.") (2006 baseline for streams: 28 percent in good condition; 25 percent in fair condition; 42 percent in poor condition. 2010 baseline for lakes: 56 percent in good condition; 21 percent in fair condition; 22 percent in poor condition.)

- ◆ By 2015, improve water quality in Indian country at 50 or more baseline monitoring stations in tribal waters (cumulative) (i.e., show improvement in one or more of seven key parameters: dissolved oxygen, pH, water temperature, total nitrogen, total phosphorus, pathogen indicators, and turbidity) and identify monitoring stations on tribal lands that are showing no degradation in water quality (meaning the waters are meeting uses). (2006 baseline: 185 monitoring stations on tribal waters located where water quality has been depressed and activities are underway or planned to improve water quality, out of an estimated 2,037 stations operated by tribes.)

- ◆ By 2015, in coordination with other federal agencies, provide access to basic sanitation for 67,900 American Indian and Alaska

Native homes. (FY 2009 baseline: 43,600 homes. Universe: 360,000 homes.)

Improve Coastal and Ocean Waters

- ◆ By 2015, improve regional coastal aquatic ecosystem health, as measured on the "good/fair/poor" scale of the National Coastal Condition Report. (FY 2009 baseline: National rating of "fair" or 2.8 where the rating is based on a 4-point system ranging from 1.0 to 5.0 in which 1 is poor and 5 is good using the National Coastal Condition Report indicators for water and sediment, coastal habitat, benthic index, and fish contamination.)

- ◆ By 2015, 95 percent of active dredged material ocean dumping sites, as determined by 3-year average, will have achieved environmentally acceptable conditions (as reflected in each site's management plan and measured through onsite monitoring programs). (2009 baseline: 99 percent. FY 2009 universe is 65.) (Due to variability in the universe of sites, results vary from year to year (e.g., between 85 percent and 99 percent). While this much variability is not expected every year, the results are expected to have some change each year.)

- ◆ By 2015, working with partners, protect or restore an additional (i.e., measuring from 2009 forward) 600,000 acres of habitat within the study areas for the 28 estuaries that are part of the National Estuary Program. (2009 baseline: 900,956 acres of habitat protected or restored, cumulative from 2002–2009. In FY 2009, 125,437 acres were protected or restored.)



Increase Wetlands

- ◆ By 2015, working with partners, achieve a net increase of wetlands nationwide, with additional focus on coastal wetlands, and biological and functional measures and assessment of wetland condition. (2004 baseline: 32,000 acres annual net national wetland gain.)

Improve the Health of the Great Lakes

- ◆ By 2015, prevent water pollution and protect aquatic systems so that the overall ecosystem health of the Great Lakes is at least 24.7 points on a 40-point scale. (2009 baseline: Great Lakes rating of 22.5 (expected) on the 40-point scale where the rating uses select Great Lakes State of the Lakes Ecosystem indicators based on a 1 to 5 rating system for each indicator, where 1 is poor and 5 is good.)
- ◆ By 2015, remediate a cumulative total of 10.2 million cubic yards of contaminated sediment in the Great Lakes. (2009 baseline: Of the 46.5 million cubic yards once estimated to need remediation in the Great Lakes, 6.0 million cubic yards of contaminated sediments have been remediated from 1997 through 2008.)

Improve the Health of the Chesapeake Bay Ecosystem

- ◆ By 2015, achieve 50 percent (92,500 acres) of the 185,000 acres of submerged aquatic vegetation necessary to achieve Chesapeake Bay water quality standards. (2008 baseline: 35 percent, 64,912 acres.)

Restore and Protect the Gulf of Mexico

- ◆ By 2015, reduce releases of nutrients throughout the Mississippi River Basin to reduce the size of the hypoxic zone in the Gulf of Mexico to

less than 5,000 km², as measured by the 5-year running average of the size of the zone. (Baseline: 2005–2009 running average size is 15,670 km².)

Restore and Protect the Long Island Sound

- ◆ By 2015, reduce the maximum area of hypoxia in Long Island Sound by 15 percent from the pre-TMDL average of 208 square miles as measured by the 5-year running average size of the zone. (Baseline: Pre-total maximum daily load (TMDL) average conditions based on 1987–1999 data is 208 square miles. Post-TMDL includes years 2000–2014. Universe: The total surface area of Long Island Sound is approximately 1,268 square miles; the potential for the maximum area of hypoxia would be 1,268 square miles.)

Restore and Protect the Puget Sound Basin

- ◆ By 2015, improve water quality and enable the lifting of harvest restrictions in 4,300 acres of shellfish bed growing areas impacted by degraded or declining water quality in the Puget Sound. (2009 baseline: 1,730 acres of shellfish beds with harvest restrictions in 2006 had their restrictions lifted. Universe: 30,000 acres of commercial shellfish beds with harvest restrictions in 2006.)

Sustain and Restore the U.S.–Mexico Border Environmental Health

- ◆ By 2015, provide safe drinking water or adequate wastewater sanitation to 75 percent of the homes in the U.S.–Mexico Border area that lacked access to either service in 2003. (2003 Universe: 98,515 homes lacked drinking water and 690,723 homes lacked adequate wastewater sanitation based on a 2003 assessment of homes in the U.S.–Mexico Border area. 2015 target: 73,886 homes provided with safe drinking water and 518,042 homes with adequate wastewater sanitation.)

End Notes:

- 1 EPA is in the process of developing a consistent methodology for analyzing the data from Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) reports. The baseline and target may be reset when the analysis is complete at the end of CY 2010.
- 2 In 2007, EPA added Guam, American Samoa, and the Northern Marianas, which resulted in a lower baseline and target.



Goal 3: Cleaning Up Communities and Advancing Sustainable Development. Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Objective 3.1: Promote Sustainable and Livable Communities. Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.

Strategic Measures:

Promote Sustainable Communities

- ◆ By 2015, reduce the air, water, land, and human health impacts of new growth and development through the use of smart growth and sustainable development strategies in 600 (cumulative) communities, which includes local municipalities, regional entities, and state governments, through activities resulting from EPA and federal partner actions. (Baseline: In FY 2010, an estimated 34 communities will be assisted.)

- ◆ By 2015, make an additional 17,800 acres of brownfield properties ready for reuse from the 2009 baseline. (Baseline: As of the end of FY 2009, EPA made 11,800 acres ready for reuse.)

Reduce Chemical Risks at Facilities and in Communities

- ◆ By 2015, continue to maintain the Risk Management Plan (RMP) prevention program and further reduce by 10 percent the number of accidents at RMP facilities. (Baseline: There was an annual average of 190 accidents based on RMP program data between 2005 and 2009.)

Assess and Cleanup Brownfields

- ◆ By 2015, conduct environmental assessments at 20,600 (cumulative) brownfield properties. (Baseline: As of the end of FY 2009, EPA assessed 14,600 properties.)

Objective 3.2: Preserve Land. Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.

Strategic Measures:

Waste Generation and Recycling

- ◆ By 2015, increase the amount of municipal solid waste reduced, reused, or recycled by 2.5 billion pounds. (At the end of FY 2008, 22.5 billion pounds of municipal solid waste had been reduced, reused, or recycled.)
- ◆ By 2015, increase beneficial use of coal combustion ash to 50 percent from 40 percent in 2008.

- ◆ By 2015, increase by 78 the number of tribes covered by an integrated waste management plan compared to FY 2009. (At the end of FY 2009, 94 of 572 federally recognized tribes were covered by an integrated waste management plan.)
- ◆ By 2015, close, clean up, or upgrade 281 open dumps in Indian country and on other tribal lands compared to FY 2009. (At the end of FY 2009, 412 open dumps were closed, cleaned up, or upgraded. As of April 2010, 3,464 open dumps were listed in the

Indian Health Service Operation and Maintenance System Database, which is dynamic because of the ongoing assessment of open dumps.)

Minimize Releases of Hazardous Waste and Petroleum Products

- ◆ By 2015, prevent releases at 500 hazardous waste management facilities with initial approved controls or updated controls resulting in the protection of an estimated 3 million people living within a mile of all facilities with controls. (Baseline: At the end of FY 2009, it was estimated that 789 facilities will require these controls out of the universe of 2,468 facilities with about 10,000 process units. The goal of 500 represents 63 percent of the facilities needing controls.)
- ◆ Each year through 2015, increase the percentage of underground storage tank (UST) facilities that are in significant operational compliance (SOC) with both release detection and release prevention requirements by 0.5 percent over the previous year's target. (Baseline: This means an increase of facilities in SOC from 65.5 percent in 2010 to 68 percent in 2015.)
- ◆ Each year through 2015, reduce the number of confirmed releases at UST facilities to 5 percent fewer than the prior year's target. (Baseline: Between FY 1999 and FY 2009, confirmed UST releases averaged 8,113.)

Objective 3.3: Restore Land. Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.

Strategic Measures:

Deepwater Horizon BP Oil Spill: Oil Spill Program Review

- ◆ By 2015, in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico, EPA will conduct a thorough assessment of its rules, guidelines, and procedures relating to all relevant aspects of EPA's oil spill program, including prevention of, preparedness for, response to, and recovery efforts, and update them as needed, and ensure that the Agency has the appropriate tools to respond to environmental disasters of this scale.
- ◆ By 2015, no more than 1.5 million gallons will be spilled annually at Facility Response Plan (FRP) facilities, a 15 percent reduction from the annual average of 1.7 million gallons spilled from 2005–2009.

Cleanup Contaminated Land

Emergency Preparedness and Response

- ◆ By 2015, achieve and maintain at least 80 percent of the maximum score on the Core National Approach to Response (NAR) evaluation criteria. (Baseline: In FY 2009, the average Core NAR Score was 84 percent for EPA headquarters, regions, and special teams prepared for responding to emergencies.)²
- ◆ By 2015, complete an additional 1,700 Superfund removals through Agency-financed actions and through oversight of removals conducted by potentially responsible parties (PRPs). (Baseline: In FY 2009, there were 434 Superfund removal actions completed including 214 funded by the Agency and 220 overseen by the Agency that were conducted by PRPs under a voluntary agreement, an administrative order on consent, or a unilateral administrative order.)
- ◆ By 2015, complete 93,400 assessments at potential hazardous waste sites to determine if they warrant Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) remedial response or other cleanup activities. (Baseline: As of 2010, the cumulative total number of assessments completed was 88,000.)³
- ◆ By 2015, increase to 84 percent the number of Superfund final and deleted NPL sites and RCRA facilities where human exposures to toxins from contaminated sites are under control. (Baseline: As of October 2009, 70 percent Superfund final and deleted NPL sites and RCRA facilities have human exposures under control out of a universe of 5,330.)⁴
- ◆ By 2015, increase to 78 percent the number of Resource Conservation and Recovery Act (RCRA) facilities with migration of contaminated groundwater under control. (Baseline: At the

end of FY 2009, the migration of contaminated groundwater was controlled at 58 percent of all 3,746 facilities needing corrective action.)

- ◆ By 2015, increase to 56 percent the number of RCRA facilities with final remedies constructed. (Baseline: At the end of FY 2009, all cleanup remedies had been constructed at 32 percent of all 3,746 facilities needing corrective action.)
- ◆ Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) that do not meet risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 21 percent in

2009 to 14 percent in 2015. (At the end of FY 2009, there were 100,165 releases not yet cleaned up.)

- ◆ Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) in Indian country that do not meet applicable risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 28 percent in 2009 to 22 percent in 2015.
- ◆ By 2015, ensure that 799 Superfund NPL sites are "sitewide ready for anticipated use." (Baseline: As of October 2009, 409 final and deleted NPL sites had achieved "sitewide ready for anticipated use.")⁵

Objective 3.4: Strengthen Human Health and Environmental Protection

in Indian Country. Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures:

Improve Human Health and the Environment in Indian Country

- ◆ By 2015, increase the percent of tribes implementing federal regulatory environmental programs in Indian country to 18 percent. (FY 2009 baseline: 13 percent of 572 tribes)

- ◆ By 2015, increase the percent of tribes conducting EPA-approved environmental monitoring and assessment activities in Indian country to 50 percent. (FY 2009 baseline: 40 percent of 572 tribes)

End Notes:

- 1 Included in the cumulative number are communities receiving assistance from: (1) direct EPA technical assistance programs; (2) EPA-funded grants and cooperative agreements to non-governmental organizations; and (3) in a limited number of communities (i.e., 6 of the total 34 communities in the FY 2010 baseline), technical assistance done in collaboration with other EPA programs (such as EPA's brownfields program) and other federal agencies (such as the Federal Emergency Management Agency and the U.S. Departments of Transportation and Housing and Urban Development).
- 2 Consistent with the government-wide National Response Framework (NRF), EPA will work to fully implement the priorities under its internal NAR so that the Agency is prepared to respond to multiple nationally significant incidents. Core NAR builds upon the Core Emergency Response concept while integrating the priority elements of EPA's NAR Preparedness Plan, and the Homeland Security Priority Workplan, to reflect an Agency-wide assessment of progress.
- 3 This new strategic measure accounts for all remedial assessments performed at sites addressed under the Superfund program, whereas the measure in the previous (2006–2011) *Strategic Plan* captured only a subset of these assessments (i.e., the final assessments completed at sites). By capturing the assessment work leading to final assessment decisions, including the initial screening assessments to determine Superfund eligibility, the new measure more fully accounts for the work performed during the Superfund site assessment process.
- 4 EPA is currently revising its dioxin risk assessment which may affect the targets and baselines for the human exposures under control and sitewide ready for anticipated use measures.
- 5 As part of the Integrated Cleanup Initiative, EPA is evaluating "sitewide ready for anticipated use" across all cleanup programs and may modify the above Superfund measure in the future to include corresponding brownfields, RCRA corrective action, and leaking underground storage tank program goals.



Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution. Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Objective 4.1: Ensure Chemical Safety. Reduce the risk of chemicals that enter our products, our environment, and our bodies.

Strategic Measures:

Protect Human Health from Chemical Risks

- ◆ By 2015, reduce by 40 percent the number of moderate to severe exposure incidents associated with organophosphates and carbamate insecticides in the general population. (Baseline is 316 moderate and severe incidents reported to the Poison Control Center (PCC) National Poison Data System (NPDS) in 2008 for organophosphate and carbamate pesticides.)
- ◆ By 2014, reduce the percentage of children with blood lead levels above 5 µg/dl to 1.0 percent or less. (Baseline is 3.0 percent in the 2005–2008 sampling period.)¹
- ◆ By 2014, reduce the percent difference in the geometric mean blood lead level in low-income children 1 to 5 years old as compared to the geometric mean for non-low income children 1 to 5 years old to 10.0 percent. (Baseline is 23.4 percent difference in the geometric mean blood lead level in low-income children 1 to 5 years old as compared to the geometric mean for non-low-income children 1 to 5 years old in 2005–2008.)¹
- ◆ By 2014, reduce the concentration in the general population for the following chemicals: non-specific organophosphate metabolites by 75 percent; chlorpyrifos metabolite (TCPy) by 75 percent; and perfluoro-octanoic acid (PFOA) in serum by 2 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) concentration data in the general population and results are reported biennially. Pesticide baselines are based on 2001–2002 95th percentile data for non-specific organophosphate metabolites (0.45 µmol/L) and chlorpyrifos metabolite (TCPy) (12.4 µg/L). PFOA baseline is based on 2005–2006 geometric mean data in serum (3.92 µg/L).)
- ◆ By 2014, reduce concentration for the following chemicals in children: non-specific organophosphate metabolites by 75 percent and chlorpyrifos metabolite (TCPy) by 75 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) metabolite concentration data in children and results are reported biennially. Pesticide baselines are based on 2001–2002 data for non-specific organophosphate metabolites (0.55 µmol/L) and chlorpyrifos metabolite (TCPy) (16.0 µg/L).)
- ◆ By 2015, complete endocrine disruptor screening program (EDSP) decisions for 100 percent of chemicals for which complete EDSP information is expected to be available by the end of 2014. (Baseline is no decisions have been completed through 2009 for any of the chemicals for which complete EDSP information is anticipated to be available by the end of 2014. EDSP decisions for a chemical can range from determining potential to interact with the estrogen, androgen, or thyroid hormone systems to otherwise determining whether further endocrine related testing is necessary.)

Protect Ecosystems from Chemical Risks

- ◆ By 2015, no watersheds will exceed aquatic life benchmarks for targeted pesticides. (Based on FY 1992–2001 data from the watersheds sampled by the USGS National Water Quality

Assessment (NAWQA) program, urban watersheds that exceed the National Pesticide Program aquatic life benchmarks are 73 percent for diazinon, 37 percent for chlorpyrifos, and 13 percent for carbaryl. Agricultural watersheds that exceed the National Pesticide Program aquatic life benchmarks are 18 percent for azinphos-methyl and 18 percent for chlorpyrifos.)

Ensure Transparency of Chemical Health and Safety Information

- ◆ Through 2015, make all health and safety studies available to the public for chemicals in commerce, to the extent allowed by law. (Baseline is 21,994 confidential business information (CBI) cases of Toxic Substances Control Act (TSCA) health and safety studies as defined in TSCA Section 3(6) that were submitted for chemicals potentially in commerce between the enactment of TSCA and January 21, 2010.)

Objective 4.2: Promote Pollution Prevention. Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

Strategic Measures:

Prevent Pollution and Promote Environmental Stewardship

- ◆ By 2015, reduce 15 billion pounds of hazardous materials cumulatively through pollution prevention. (Baseline is 4.8 billion pounds reduced through 2008.)
- ◆ By 2015, reduce 9 million metric tons of carbon dioxide equivalent (MMTCO₂Eq.) cumulatively through pollution prevention. (Baseline is 6.5 MMTCO₂Eq. reduced through 2008. The data from this measure are also calculated into the Agency's overall GHG measure under Goal 1.)
- ◆ By 2015, reduce water use by an additional 24 billion gallons cumulatively through pollution prevention. (Baseline is 51 billion gallons reduced through 2008.)
- ◆ By 2015, save \$1.2 billion through pollution prevention improvements in business, institutional, and government costs cumulatively. (Baseline is \$3.1 billion saved through 2008.)
- ◆ Through 2015, increase the use of safer chemicals cumulatively by 40 percent. (Baseline: 476 million pounds of safer chemicals used in 2009 as reported to be in commerce by Design for the Environment program.)

End Note:

- 1 Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) data are collected in 2-year samples and released incrementally with the data typically becoming available 2 to 3 years after the sampling period ends.



Goal 5: Enforcing Environmental Laws. Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Objective 5.1: Enforce Environmental Laws. Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures:

Note: The enforcement measures in this *Plan* reflect: (1) the enforcement presence and level-of-effort measures that reflect the Agency's continued and strong investment in enforcement work; and (2) the reductions in pollution achieved through enforcement cases (i.e., case-specific outcome indicators) which are dominated by the very largest cases and will typically vary widely over time depending on the pollution problems being addressed. EPA is also developing enforcement measures for work done to support the strategic outcomes under each of the media-specific goals in this *Plan*; these measures will be described in future *Annual Plans and Budgets* and *Annual Performance Reports*.

Maintain Enforcement Presence

- ◆ By 2015, conduct 105,000 federal inspections and evaluations (5-year cumulative). (FY 2005–2009 baseline: 21,000 annually)
- ◆ By 2015, initiate 19,500 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005–2009 baseline: 3,900 annually)
- ◆ By 2015, conclude 19,000 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005–2009 baseline: 3,800 annually)
- ◆ By 2015, maintain review of the overall compliance status of 100 percent of the open consent decrees. (Baseline 2009: 100 percent)
- ◆ Each year through 2015, support cleanups and save federal dollars for sites where there are no alternatives by: (1) reaching a settlement or taking an enforcement action before the start of a remedial action at 99 percent of Superfund sites having viable responsible parties other than the federal government; and (2) addressing all cost recovery statute of limitation cases with total past costs greater than or equal to \$200,000. (Baseline: 99 percent of sites reaching a settlement or EPA taking an enforcement action (FY

2007–2009 annual average); 100 percent cost recovery statute of limitation cases addressed (FY 2009))

- ◆ By 2015, increase the percentage of criminal cases with charges filed to 45 percent. (FY 2006–2010 baseline: 36 percent)
- ◆ By 2015, maintain an 85 percent conviction rate for criminal defendants. (FY 2006–2010 baseline: 85 percent)

Support Taking Action on Climate Change and Improving Air Quality

- ◆ By 2015, reduce, treat, or eliminate 2,400 million estimated pounds of air pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 480 million pounds, annual average over the period)

Support Protecting America's Waters

- ◆ By 2015, reduce, treat, or eliminate 1,600 million estimated pounds of water pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 320 million pounds, annual average over the period)

Support Cleaning Up Communities and Advancing Sustainable Development

- ◆ By 2015, reduce, treat, or eliminate 32,000 million estimated pounds of hazardous waste as a result of concluded enforcement actions (5-year cumulative). (FY 2008 baseline: 6,500 million pounds)
- ◆ By 2015, obtain commitments to clean up 1,500 million cubic yards of contaminated soil and groundwater media¹ as a result of concluded CERCLA and RCRA corrective action enforcement actions (5-year cumulative). (FY 2007–2009 baseline: 300 million cubic yards of contaminated soil and groundwater media, annual average over the period)

Support Ensuring the Safety of Chemicals and Preventing Pollution

- ◆ By 2015, reduce, treat, or eliminate 19.0 million estimated pounds of toxic and pesticide pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 3.8 million pounds, annual average over the period)

Enhance Strategic Deterrence through Criminal Enforcement

- ◆ By 2015, increase the percentage of criminal cases having the most significant health, environmental, and deterrence impacts to 50 percent. (FY 2010 baseline: 36 percent)²
- ◆ By 2015, maintain 75 percent of criminal cases with an individual defendant. (FY 2006–2008 baseline: 75 percent)

End Notes:

- 1 Contaminated groundwater media, as defined for the Superfund and RCRA corrective action programs, is the volume of physical aquifer (both soil and water) that will be addressed by the response action.
- 2 EPA collects data on a variety of case attributes to describe the range, complexity, and quality of our criminal enforcement national docket. Cases are tiered depending on factors such as the human health (death, injury) and environmental impacts, the nature of the pollutant and the its release into the environment, and the characteristics of the subject(s). This measure reflects the percentage of cases in the upper tiers.

Office of the Chief Financial Officer
Office of Planning, Analysis, and Accountability (2721A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
<http://www.epa.gov/ocfo/plan/plan.htm>
EPA-190-R-10-002
September 2010

Congress of the United States
Washington, DC 20515

July 14, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

We have serious concerns with the Environmental Protection Agency's (EPA) proposed National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (NESHAP) (79 Fed. Reg. 75622), which is expected to be finalized by September 2015. In this draft rule, EPA proposes to regulate "major sources" of air emissions in the ceramic tile industry, even though EPA admits in the preamble that there are no major sources in this industry to regulate. EPA even admits that, because these regulations will regulate no one, they have no environmental benefits – an admission that acknowledges the needlessness of this proposed regulation.

Voluntary action by the tile industry to reduce emissions has resulted in all ceramic tile manufacturing facilities in the country remaining below the major source threshold. Industry has voluntarily spent millions of dollars to permanently reduce emissions, and their success has occurred at least four years earlier than if industry had waited for EPA to promulgate a major source NESHAP. These initiatives have been developed at considerable cost and expense to domestic tile producers. These initiatives include a third-party certified environmental footprint for North American ceramic tile and thousands of products certified to the American National Standards Institute-accredited (ANSI) Green Squared sustainability standard.

Furthermore, since there are no major sources of air emissions in the ceramic tile industry, EPA's proposed rule relies on hypothetical manufacturing and air emissions control strategies, flawed scientific data from an non-validated stack test method, non-validated assumptions taken from other industries with no ceramic tile precedents, and generally questionable science. Using questionable data and conclusions based on flawed science in federal regulation sets an unacceptable precedent.

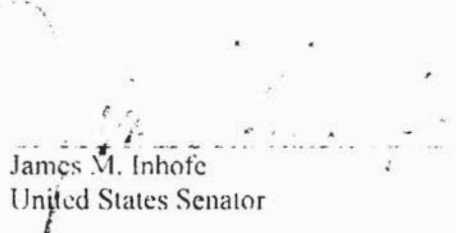
We recognize that EPA entered into a Consent Decree with Sierra Club to settle a deadline lawsuit filed by that group. *Sierra Club v. EPA*, 850 F.2d 300 (D.D.C. 2012). The *Sierra Club* Consent Decree requires EPA to finalize regulations for the major sources in the Clay Ceramics Manufacturing Category. However, under the Administrative Procedure Act, EPA may not agree in a Consent Decree to adopt a particular regulatory outcome. A decision not to establish standards is a final rulemaking.

Further, there are no Consent Decree requirements applicable specifically to the ceramic tile industry because, although it is a subcategory of the Clay Ceramics Manufacturing Category,


there are no major source ceramic tile plants. Even if EPA had the authority to agree to the outcome of a rulemaking in a Consent Decree, the Consent Decree's directive will be satisfied when EPA finalizes regulations for the brick manufacturing and sanitaryware manufacturing industries, subcategories of Clay Ceramics Manufacturing for which there are major sources.

Since there are no costs or emissions reductions expected under the Clay Ceramics Manufacturing rule, it is our request that the standards for ceramic tile manufacturing not be finalized. Any additional time spent on an action that applies to no one would be a waste of federal government resources and taxpayer dollars.

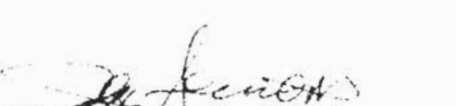
Sincerely,



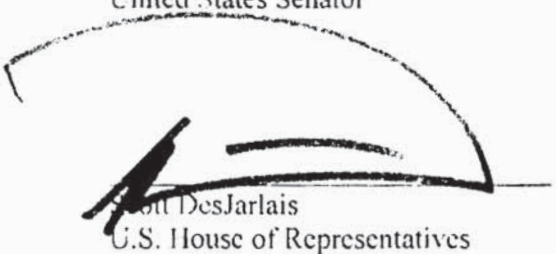
James M. Inhofe
United States Senator



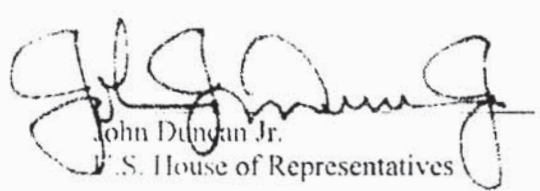
Deb Fischer
United States Senator



Jeff Sessions
United States Senator



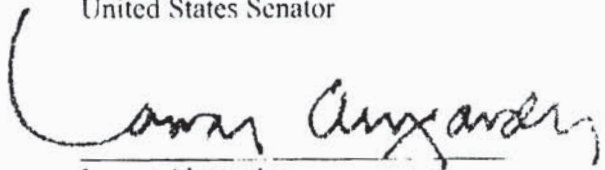
Scott DesJarlais
U.S. House of Representatives




John Duncan Jr.
U.S. House of Representatives



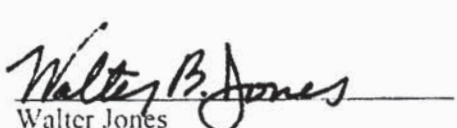
David Vitter
United States Senator




Lamar Alexander
United States Senator



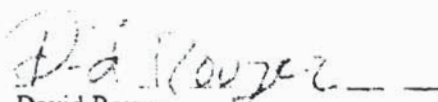
Marsha Blackburn
U.S. House of Representatives





Walter Jones
U.S. House of Representatives





Phil Roe
U.S. House of Representatives



David Rouzer
U.S. House of Representatives



Steve King
U.S. House of Representatives

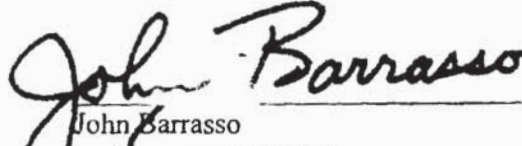

Doug Linder
U.S. House of Representatives


Ryan Zinke
U.S. House of Representatives



Stephen Fincher
U.S. House of Representatives


Diane Black
U.S. House of Representatives


Louie Gohmert
U.S. House of Representatives


John Barrasso
United States Senator


Shelley Moore Capito
United States Senator


John Boozman
United States Senator

cc: Janet McCabe, Acting Assistant Administrator for Air



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 8 2015

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United State Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of July 14, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the potential economic impacts of the brick and structural clay rule that was proposed on December 18, 2014. The Administrator asked that I respond on her behalf.

The EPA is currently evaluating all of the timely comments that were received in response to the proposed rule, including comments similar to the ones you make in your letter about the projected benefits and costs of this rulemaking. We will be responding in the response to comments document, which will be available in the docket (Docket ID Number EPA-HQ-2013-0290) for the final rule when it is issued under court order by September 24, 2015. I have asked my staff to place your letter in the docket.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. McCabe", is written above the typed name.

Janet G. McCabe
Acting Assistant Administrator

JEFF SESSIONS
ALABAMA

COMMITTEES
ARMED SERVICES
JUDICIARY
ENERGY AND NATURAL RESOURCES
BUDGET

United States Senate
WASHINGTON, DC 20510-0104

August 17, 2007

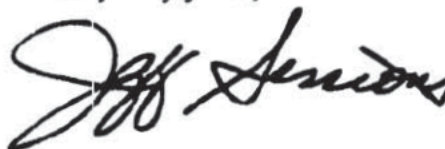
Ms. Stephanie N. Daigle
Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3426 ARN
Washington, D.C. 20460

Dear Ms. Daigle:

Please find attached a copy of a letter that I have received from Mr. (b) (6) a constituent of mine from Repton, Alabama. As you will see, Mr. (b) (6) is concerned with the Conecuh County dump and his desire to see the EPA regulate the size of dumps, lengthening the post closure monitoring and require that they all have reclamation and "waste to energy" facilities. I am forwarding his letter to you and asking that you please address Mr. (b) (6) concerns and respond directly to him. Additionally, I ask that you please provide me with a copy of any such response.

Thank you for your time and consideration of this matter. If you have any questions or comments related to this request, please do not hesitate to contact me or my staff.

Very truly yours,



Jeff Sessions
United States Senator

JS:sdb

(b) (6)

Senator Jeff Sessions
335 Russell Senate Office Building
Washington, D. C. 20510.

Dear Senator Jeff Sessions,

It was a real pleasure meeting you at the Bellville meeting last week. I enjoyed your reminiscences of your younger days in Hybart. It gave me the impression that in spite of your accomplishments you're a "country boy" at heart, and that mind set is just what we need to achieve some changes I feel we need at your level to protect the rural area in Alabama and the USA in general.

Months ago the issue of a mega-dump surfaced in Conecuh County, Alabama. We are resolved to resist this issue to the bitter end, knowing our chances of success against "big money" is slim at best. This is not a local or regional dump. It is projected to occupy an area of 1500 acres, 30 feet deep and unknown height. It will be in the middle of a 5100 acre track of land. If allowed, it will become the largest active dump in the States. They project trucking and rail in 10,000 tons per day.

Although the EPA has made advances in the regulation of dump construction and operation, they have only curtailed the worst offenders. Unfortunately their rules have been accepted as the "gold standard" for the industry. In reality dumps are not the real answer to the trash problem. One does not have to research the issue very deeply before finding people like G. Fred Lee. Mr. Lee is an appropriately educated, ethical investigator with many years of research to support his conclusions. I invite you to go to his web site and read for your self why dumps threaten our water, our health and our environment. His web site is: <http://www.gfredlee.com>. I apologize for giving you such a task, but this is not an easy or simple problem.

Through my research I have come to the conclusion the only sensible solution is the concept of "zero waste". This is a giant step from where we are today and will have many growing pains before it can be achieved. It is in practice in some European countries now, perhaps we can learn from their experience.

Until we can achieve this ideal we need to steer and direct the EPA through a series of changes to make the producers of trash responsible for "their" problem. In other words, solve the problem where it is generated and stop these large urban municipalities from destroying what's beautiful in rural America. I sense you will understand why some of us prefer this lifestyle instead of urban living.

If we could persuade the EPA to regulate the size of dumps, lengthening the post closure monitoring, and require that they all have reclamation and "waste to energy" facilities, perhaps, we will take a step in the right direction. Ultimately, we must change the "throw away" mentality of the American people and the manufacturing and marketing practices of industry. We must control progress as to not become its servant. If not it will slowly consume and destroy its inventor.

I don't consider myself a "tree hugger", but I do like to look at them. I don't want to stop progress. I just want it to work for me, not against me. I don't want to be guilty of throwing out the bath water with the baby in it.

It hurts me deeply to think of the legacy we are leaving to the children of tomorrow. I hope it hurts you too.

Sincerely yours,

(b) (6)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 31 2007

George M. Jervey, M.D.
1069 Range Cemetery Road
Repton, Alabama 36475

Dear Dr. Jervey:

Thank you for your August 17, 2007, letter to Senator Jeff Sessions regarding a proposed municipal solid waste landfill (MSWLF) in Conecuh County, Alabama. In the letter, you asked the U.S. Environmental Protection Agency (EPA) to modify its MSWLF regulations to limit the size of landfills, to extend the minimum post-closure care period, and to require reclamation and waste-to-energy facilities at MSWLFs. Senator Sessions asked that I respond directly to you.

Subtitle D of the Resource Conservation and Recovery Act (RCRA) establishes a framework for federal, state and local government cooperation in managing nonhazardous solid waste. Within that framework, EPA establishes the overall regulatory direction by providing minimum nationwide standards for protecting human health and the environment and by providing technical assistance to states for planning and developing environmentally-sound waste management practices. The actual planning and direct implementation of nonhazardous solid waste programs, however, remain largely state and local responsibilities. EPA-approved state landfill permitting programs have adopted the federal standards or state regulations that are more stringent than the federal regulations.

On March 2, 1994, EPA approved the Alabama Department of Environmental Management's (ADEM) MSWLF permitting program. In an approved state, the state agency director may decrease or increase the length of the 30-year-post-closure care period for an MSWLF, considering the need to ensure protection of human health and the environment. The actual size of a MSWLF relies upon and may be limited by hydrology, geology, and several other considerations on any given site. A state agency's evaluation of a required hydrogeologic assessment report allows that agency to determine the area that may actually be utilized for disposal.

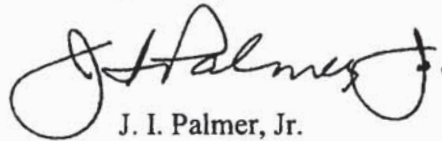
Recycling, reclamation, and waste-to-energy facilities located at or near MSWLFs, when properly planned and operated, can be key components to a municipal solid waste management system. As such, many landfill owners/operators co-locate these types of facilities at their MSWLFs. Diverting materials such as organics (e.g., yard trimmings, cardboard, paper), tires, white goods (e.g., refrigerators, washers, dryers), and other things from land disposal will also conserve space and thereby prolong the life expectancy of a landfill, which is another incentive for owners/operators to do so. If materials that are diverted can be beneficially reused, recycled,

and/or used to generate energy, then having the necessary markets available for these end-use products is vital to making these facilities economically feasible to operate. EPA and ADEM have strong pollution prevention programs that seek to minimize the amount of materials that are discharged or placed into our air, water, or land; however, collaborative efforts between communities and local government officials are most often the point at which successes in comprehensive municipal solid waste management strategies are realized.

Regarding the status of the proposed MSWLF in Conecuh County, ADEM has informed my staff that an application has not yet been submitted for the construction and operation of a facility. Moreover, we understand that prior to an applicant submitting a full application package to ADEM, the local government must first review and approve the proposal. This process must include a public meeting and a sufficient public comment period. Subsequent to that public participation process, the appropriate Regional Planning and Development Commission must review the proposal to evaluate its consistency with provisions in the current regional solid waste management needs assessment. ADEM requires the permit applicant to include documentation in the permit application that these steps have been successfully taken and approval by both entities has been received. For additional details about ADEM's permitting process, please contact Chris L. Johnson, Chief of the Solid Waste Section, at (334) 271-7764.

If you would like further information from EPA, please contact Davy Simonson in EPA Region 4's RCRA Division at (404) 562-8457.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. I. Palmer, Jr.", with a large, stylized initial "J" and a trailing flourish.

J. I. Palmer, Jr.
Regional Administrator

cc: The Honorable Jeff Sessions
Trey Glenn III, Director, ADEM